

CFTC Ex. 529

Long Leaf Trading Group

Donelson, James 2021-06-24

6/24/2021 9:09 AM

Condensed Transcript

Prepared by:

Ashley Burden
CFTC

Wednesday, November 3, 2021

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
 2 EASTERN DIVISION
 3 COMMODITY FUTURES TRADING)
 COMMISSION,)
 4)
 Plaintiff,)
 5)
 vs.) No. 20 C 3758
 6)
 LONG LEAF TRADING GROUP,)
 7 INC., et al.,)
)
 Defendants.)
 8
 9
 10
 11 The remote 30(b)(6) deposition
 12 of JAMES A. DONELSON, called by the Plaintiff for
 13 examination, pursuant to subpoena and pursuant to
 14 the Federal Rules of Civil Procedure for the United
 15 States District Courts pertaining to the taking of
 16 depositions, taken before Mary Maslowski, Certified
 17 Shorthand Reporter and Notary Public within and
 18 for the County of Cook and State of Illinois with
 19 the witness located in Aurora, Illinois, commencing
 20 at the hour of 9:09 o'clock on June 24, 2021.
 21
 22
 23
 24

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1 A P P E A R A N C E S:
 2
 3 (Appearing via videoconference)
 MR. JOSEPH C. PLATT, Trial Attorney
 MS. ELIZABETH M. STREIT, Trial Team Leader
 4 MR. JOSEPH J. PATRICK, Senior Investigator
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 8
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 14 On behalf of Long Leaf Trading Group,
 Inc., and James A. Donelson;
 15 (Appearing via videoconference)
 MR. JEREMY RUTH
 16
 17 Appearing Pro Se.
 18
 19
 20 A L S O P R E S E N T:
 21 MS. LAUREN STAPLETON, CFTC Intern (Remotely)
 22
 23 CSR License No. 084-003278.
 24

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1 JAMES A. DONELSON,
 2 called as a witness herein, having been first duly
 3 sworn, was examined and testified as follows:
 4 D I R E C T E X A M I N A T I O N
 5 BY MR. PLATT:
 6 Q My name is Joseph Platt and I'm
 7 a trial attorney at the CFTC. I'm joined today by
 8 Beth Streit, who's the chief trial attorney, Joseph
 9 Patrick, who's a futures trading investigator, a
 10 law student intern, Lauren Stapleton, from the CFTC.
 11 I also see that Jeremy Ruth, who's a defendant in
 12 this action, is present and Mr. Donelson, who's the
 13 witness for Long Leaf Trading. And, Mr. Donelson,
 14 are you represented -- or is Long Leaf Trading
 15 represented by counsel today?
 16 A Yes, it is.
 17 Q And that's Mr. Falvey, who's sitting
 18 beside you?
 19 A Correct.
 20 Q This deposition's being conducted
 21 pursuant to Federal Rules of Civil Procedure and
 22 the local rules for the U.S. District Court for the
 23 Northern District of Illinois and we're proceeding
 24 by videoconference today. Mr. Donelson, do you

<p style="text-align: right;">Page 5</p> <p>1 agree to proceed in this manner today based on the</p> <p>2 Coronavirus travel restrictions?</p> <p>3 A I agree.</p> <p>4 Q You've given a couple depositions</p> <p>5 in this action and testimony. We'll just go over</p> <p>6 the rules of the road very briefly. Let's do our</p> <p>7 best not to talk over one another. I'll do my best</p> <p>8 to let you finish answering your questions before</p> <p>9 I ask -- finish answering my questions before I ask</p> <p>10 another one, and I'll just ask that you let me</p> <p>11 answer my question before you -- ask my question</p> <p>12 before you answer, is that okay?</p> <p>13 A Agreed.</p> <p>14 Q And two other items based on yesterday.</p> <p>15 Please do your best to speak and answer audibly</p> <p>16 and also, you know, project your voice so that the</p> <p>17 court reporter is able to pick up your answers,</p> <p>18 okay?</p> <p>19 A I will try, and please tell me if it's</p> <p>20 not coming through clearly.</p> <p>21 Q Yeah, will do. Thank you. And</p> <p>22 if any of my questions today are unclear or</p> <p>23 unintelligible, please let me know and I'll do</p> <p>24 my best to ask a question that makes more sense,</p>	<p style="text-align: right;">Page 7</p> <p>1 conglomerate?</p> <p>2 A I left that in June of 2014.</p> <p>3 Q Why did you leave Jump Trading?</p> <p>4 A When or --</p> <p>5 Q Why, why.</p> <p>6 A I had gone into short-term disability</p> <p>7 and basically couldn't return. I had torn up a</p> <p>8 shoulder and the commute was just too much for me.</p> <p>9 Q What was the nature of the consulting</p> <p>10 business that you did between Jump Trading and</p> <p>11 Long Leaf Trading?</p> <p>12 A One is the development of middle</p> <p>13 office software that does trade reconciliation,</p> <p>14 accounting. That's ongoing. Also did consulting</p> <p>15 for a couple manufacturing firms developing cost</p> <p>16 accounting models for them, things like that.</p> <p>17 Q What is the National Futures Association?</p> <p>18 A It is a self-regulated -- a self-regulation</p> <p>19 organization overseeing the futures industry.</p> <p>20 Q Commonly abbreviated the NFA. What</p> <p>21 is the NFA's role with respect to regulating the</p> <p>22 futures industry? I think you just said it, but</p> <p>23 if you could just expand on your answer.</p> <p>24 A They do -- I'm trying to get the</p>
<p style="text-align: right;">Page 6</p> <p>1 okay?</p> <p>2 A Okay.</p> <p>3 Q Mr. Donelson, can you please describe</p> <p>4 your work history going back ten years or so?</p> <p>5 A For -- obviously I worked at Long Leaf</p> <p>6 Trading for two years. Before that I was doing</p> <p>7 mostly consulting after I left Jump Trading. At</p> <p>8 Jump Trading I was the global controller responsible</p> <p>9 for the financials, doing some of the FinOP work for</p> <p>10 the broker-dealers. Also they had a CV registered</p> <p>11 firm. And before that I worked for KCG, which was</p> <p>12 the merger of Getco and Knight Capital. I worked</p> <p>13 for Getco before the merger. I was involved with</p> <p>14 the merger. Mostly did business development,</p> <p>15 taxes, finance at Getco, opened up most of their</p> <p>16 international operations.</p> <p>17 Q And you started at Long Leaf Trading</p> <p>18 in approximately December of 2017. Does that sound</p> <p>19 right?</p> <p>20 A That is correct.</p> <p>21 Q When did you stop working at Jump Trading</p> <p>22 as their global controller?</p> <p>23 A I want to say June 2016.</p> <p>24 Q And when did you leave the KCG/Getco</p>	<p style="text-align: right;">Page 8</p> <p>1 words right. They are in charge of all their</p> <p>2 member firms reviewing compliance, some finance,</p> <p>3 trading, et cetera, but it's only for their member</p> <p>4 firms.</p> <p>5 Q Do you have an understanding that the</p> <p>6 NFA handles registration of entities and entities</p> <p>7 that are required to be registered in the futures</p> <p>8 industry?</p> <p>9 A Correct. Yeah, I do understand that.</p> <p>10 Q Do you know what NFA BASIC is?</p> <p>11 A Yes. It's an online system where</p> <p>12 you can look up a person, a company, see any --</p> <p>13 where they're registered, any regulatory issues</p> <p>14 that they've had, so on and so forth.</p> <p>15 Q Did you know about NFA BASIC before you</p> <p>16 owned Long Leaf Trading?</p> <p>17 A Yes.</p> <p>18 Q I understand that you became the</p> <p>19 principal of Long Leaf Trading in approximately</p> <p>20 December '17 via a stock purchase agreement. Does</p> <p>21 that sound right?</p> <p>22 A That is correct.</p> <p>23 Q Who was the principal of Long Leaf</p> <p>24 Trading Group before you bought the company?</p>

<p style="text-align: right;">Page 9</p> <p>1 A Timothy Evans.</p> <p>2 Q Did you know Mr. Evans before</p> <p>3 you entered into the stock purchase agreement</p> <p>4 with him?</p> <p>5 A No, I did not.</p> <p>6 Q What's your understanding of the date</p> <p>7 on which Long Leaf began operations?</p> <p>8 A The company itself? I don't -- I think</p> <p>9 it was 2009 or 2010.</p> <p>10 Q Are you aware of any other entities</p> <p>11 or individuals who have held an ownership stake</p> <p>12 in Long Leaf Trading at any time other than you</p> <p>13 or Mr. Evans?</p> <p>14 A No, I'm not aware of any.</p> <p>15 Q For purposes of this deposition,</p> <p>16 Mr. Donelson, can we agree that the Evans era</p> <p>17 means things that happened at Long Leaf Trading</p> <p>18 before December 1, 2017 and the Donelson era means</p> <p>19 things that happened at Long Leaf Trading after</p> <p>20 December 1, 2017? Does that sound reasonable?</p> <p>21 A I can agree to that.</p> <p>22 Q Yesterday Mr. Burden sent you documents</p> <p>23 ahead of time so you could click through it -- click</p> <p>24 through them.</p>	<p style="text-align: right;">Page 11</p> <p>1 Long Leaf Trading in this action?</p> <p>2 A Yes.</p> <p>3 Q Have you seen this document before?</p> <p>4 A Yes, I have.</p> <p>5 Q I'm going to scroll to pages 3 and 4</p> <p>6 of Exhibit 490. There's a heading Rider to Notice</p> <p>7 of Deposition of Defendant Long Leaf Trading Group.</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q And then there's a list of 21 topics.</p> <p>11 I've scrolled through them quickly. If as we</p> <p>12 proceed today you'd like me to focus on particular</p> <p>13 parts of documents, please don't hesitate to ask me</p> <p>14 to move the document around or manipulate it so you</p> <p>15 can see a particular portion. But do you see there</p> <p>16 are 21 topics listed on this rider to the Long Leaf</p> <p>17 deposition notice?</p> <p>18 A Yes, I do.</p> <p>19 Q I should have asked you this at the</p> <p>20 outset, Mr. Donelson. I assume you consent to</p> <p>21 testify on Long Leaf Trading's behalf today, is</p> <p>22 that right?</p> <p>23 A I do.</p> <p>24 Q I've had a series of discussions</p>
<p style="text-align: right;">Page 10</p> <p>1 A Yeah.</p> <p>2 Q I'm going to show you exhibits by sharing</p> <p>3 my screen with you.</p> <p>4 A Okay.</p> <p>5 Q So I want to make sure that you can</p> <p>6 read them legibly when I share them. I'm going</p> <p>7 to share with you a document that I'm going to mark</p> <p>8 as CFTC Exhibit 490.</p> <p>9 (Whereupon CFTC Exhibit No. 490</p> <p>10 was marked for identification.)</p> <p>11 Q Please let me know when you're able</p> <p>12 to see this document.</p> <p>13 A We can see it now.</p> <p>14 Q Is it legible on your screen? Can you</p> <p>15 read the words?</p> <p>16 A It is legible. It's small but it's</p> <p>17 legible.</p> <p>18 MR. FALVEY: Do you need your glasses?</p> <p>19 THE WITNESS: I'm trying to see if it</p> <p>20 helps or hurts.</p> <p>21 A I can read it.</p> <p>22 BY MR. PLATT:</p> <p>23 Q Thank you. Do you recognize this</p> <p>24 document as the CFTC's deposition notice regarding</p>	<p style="text-align: right;">Page 12</p> <p>1 with your attorney Mr. Falvey about the scope</p> <p>2 of this deposition, and the notice -- I'll put</p> <p>3 it back up on the screen -- do you see where it</p> <p>4 says, "The relevant period of the CFTC's examination</p> <p>5 of Long Leaf Trading is 2015 through the present"?</p> <p>6 A Yeah, I see it.</p> <p>7 Q So Mr. Falvey has represented</p> <p>8 to me a couple times that you do not have</p> <p>9 the ability to answer questions concerning the</p> <p>10 majority of the topics listed in Exhibit 490 to</p> <p>11 the extent they occurred during the Evans era. Is</p> <p>12 that consistent with your understanding generally?</p> <p>13 A Yes.</p> <p>14 Q Is it true that you're not able</p> <p>15 to obtain information that's reasonably available</p> <p>16 to Long Leaf Trading to answer questions about the</p> <p>17 Evans era?</p> <p>18 A I can obtain the materials. However,</p> <p>19 I have no way to authenticate them one way or the</p> <p>20 other, and I have provided all the information that</p> <p>21 was available to me. It's just if there's anything</p> <p>22 specific about a situation, I wasn't there. I</p> <p>23 don't -- I would only have secondhand information</p> <p>24 at best.</p>

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1 Q Just so I understand your testimony,
2 you have available to you the documents and
3 information that Long Leaf possessed at the time
4 you bought the firm but because you weren't present
5 at the firm during the Evans era, you may not be
6 able to answer questions about that time period.
7 Is that generally right?

8 A That is correct.

9 Q Mr. Donelson, are you able to testify
10 about Long Leaf Trading's discovery responses in
11 this action?

12 A Yes, I am.

13 Q Can you testify about the documents
14 that Long Leaf Trading has produced to the CFTC
15 both during the investigative phase and during the
16 litigation?

17 A Yes.

18 Q Are you able to testify about
19 Long Leaf Trading's ownership and organizational
20 structure? Is this a topic where you can testify
21 about the Donelson era but you cannot testify about
22 the Evans era?

23 A Yes.

24 Q Item 4 is compensation paid to Long

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1 Leaf Trading employees and principals. Are
2 you able to testify about information known or
3 reasonably available to Long Leaf Trading concerning
4 the Evans era?

5 A Yes.

6 Q So for compensation you are able to testify
7 about the Evans era?

8 A I have the records of what the compensation
9 was and have provided them to the CFTC.

10 Q Item 5, the operation of Long Leaf
11 Trading's trading program, are you able to testify
12 about information known or reasonably available to
13 Long Leaf Trading concerning the Evans era?

14 A No, not during the Evans era. I'm --
15 wait. Can I ask a question here? Can you please
16 define what operation of the trading program
17 entails?

18 Q You understand that Long Leaf Trading
19 sold a trading program to its customers, right?

20 A Yes.

21 Q What kinds of business activities went
22 into the trading program?

23 A I just don't know how to answer this
24 question.

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1 Q Okay. Let me ask you some questions
2 and see if we can drill down on how to --

3 A Okay.

4 Q -- how to scope this topic. Long
5 Leaf Trading's trading program involves trading
6 recommendations, right?

7 A Correct.

8 Q Long Leaf Trading came up with those
9 trading recommendations?

10 A I assume during the Evans era. I don't
11 have actual proof that he created them.

12 Q Someone designed trades?

13 A Someone designed trades, yes.

14 Q Those trading recommendations were
15 disseminated to customers, right?

16 A Correct.

17 Q Customers may or may not have executed
18 those trades, right?

19 A Correct.

20 Q The trades either made money or lost
21 money, right?

22 A Correct.

23 Q Long Leaf Trading interacted with
24 customers about the trading recommendations,

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1 right?

2 A Correct.

3 Q Long Leaf Trading, you know, solicited
4 customers to participate in the trading program,
5 is that right?

6 A That is correct.

7 Q I think those are the kinds of
8 topics that I think about when I use the term the
9 operation of Long Leaf Trading's trading program.
10 It's a broad term.

11 A Okay. I --

12 Q So with that in mind, are you as Long
13 Leaf's witness able to testify about information
14 known or reasonably available to Long Leaf Trading
15 concerning the Evans era?

16 A Yes.

17 Q And is this -- for Topic 5, is this
18 consistent with your answer earlier where you said
19 that you had the documents available to you and you
20 could go read documents that existed but you didn't
21 have firsthand knowledge?

22 A Correct.

23 Q Okay. Are you able to testify --

24 on Item 6 are you able to testify about the manner

<p style="text-align: right;">Page 17</p> <p>1 by which Long Leaf Trading developed trading 2 recommendations -- 3 A No. 4 Q -- during the Evans era? 5 A No, I do not have any documentation of 6 how he developed the trades. 7 Q Item 7, are you able to testify about the 8 records that Long Leaf maintains regarding trading 9 recommendations during the Evans era? 10 A Yes. 11 Q Are you able to testify about the -- 12 and continuing on Item 7, you're able to testify 13 about records Long Leaf Trading maintained during 14 the Evans era concerning the performance of the 15 trading recommendations? 16 A Not really. There was no records of those 17 performance by trading recommendation. 18 Q Okay. We'll come back to that topic 19 just to see what you're able to testify about and 20 what you aren't. 21 A Okay. 22 Q Are you able to testify about 23 the performance of accounts of customers that 24 participated in the Long Leaf Trading program during</p>	<p style="text-align: right;">Page 19</p> <p>1 by Long Leaf to customers about their account 2 statements, balances and performance of the trading 3 system during the Evans era? 4 A To the extent that they're in the records, 5 yes. 6 Q Are you able to testify about Long Leaf 7 Trading's supervision of its associated persons 8 during the Evans era? 9 A No, I don't -- very little HR records 10 were kept. 11 Q Are you able to testify on Topic 15 about 12 Long Leaf Trading's solicitations of prospective 13 customers during the Evans era? 14 A Only to the extent of the records. 15 Q Item 16 on Exhibit 490, are you 16 able to testify about information provided to 17 Long Leaf Trading's prospective customers regarding 18 the performance of the trading program during the 19 Evans era? 20 A Only to the extent of the records. 21 Q Mr. Donelson, on a couple of these 22 topics you've repeated your answer as you can 23 testify about Long Leaf's information during the 24 Evans era only to the extent of the records.</p>
<p style="text-align: right;">Page 18</p> <p>1 the Evans era? 2 A Yes, I have those. Those are the records. 3 Q Are you able to testify about the 4 commissions and fees charged to customers during 5 the Evans era? 6 A Yes, I have those records. 7 Q Able to testify about Long Leaf Trading's 8 accounts that it received from Gain Capital during 9 the Evans era? 10 A Yes, I have those records. 11 Q Are you able to testify about customer 12 complaints received by Long Leaf Trading during the 13 Evans era? 14 A I didn't have firsthand knowledge of 15 those complaints. I have the complaint log, but 16 that's -- that is an ongoing record that we kept. 17 Q Other than the complaint log, which 18 I think reflected three customer complaints, do 19 you have information concerning customer complaints 20 received by Long Leaf Trading during the Evans era? 21 A No. 22 Q Are you able to testify about 23 information known or reasonably available to 24 Long Leaf Trading concerning information provided</p>	<p style="text-align: right;">Page 20</p> <p>1 Can you please clarify what that means? 2 A I can verify that the document is -- 3 when I say the document, I may know nothing about 4 the conversation or anything around it. I can't 5 add much color around whatever that is. 6 Q Is it correct to say that to the 7 extent there are documents or information that 8 you received -- strike that question. 9 Is it fair to say that the 10 extent of your ability to testify on Long Leaf 11 Trading's behalf concerning the Evans era when 12 you say only to the extent of the records, is to 13 provide information concerning that you received 14 the documents or information in connection with 15 the stock purchase agreement by which you bought 16 Long Leaf Trading? 17 A Yes. 18 Q That's helpful. Thank you. I'm 19 going to share what's been previously marked as 20 CFTC Exhibit 62. Do you see the stock purchase 21 agreement by which you purchased Long Leaf Trading? 22 Are you able to read that on your screen? 23 A Yes. 24 Q So as of December 1, 2017 Donelson</p>

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1 Enterprises controlled all the issued and
2 outstanding stock of Long Leaf Trading, is that
3 accurate?

4 A That is correct.

5 Q Has Long Leaf Trading ever made any
6 capital distributions to Donelson Enterprises?

7 A No.

8 Q Has Long Leaf Trading ever made any
9 capital distributions to any person or entity
10 since you've owned the company?

11 A No.

12 Q Has Long Leaf Trading ever transferred
13 any other thing of value to Donelson Enterprises
14 since you owned the company?

15 A It paid a management fee from Long
16 Leaf Trading to Donelson Enterprises to pay for
17 the SBA loan.

18 Q How much did Long Leaf Trading
19 pay to Donelson Enterprises as part of this --
20 in connection with the management fees you were
21 just describing?

22 A In total over time or on a monthly basis?

23 Q Both, please. How much in total and
24 then how frequently and how much on a recurring

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1 basis.

2 A It would transfer \$16,000 a month
3 for management fees. It did that through -- let
4 me write some quick math here.

5 Q Sure.

6 A I don't have this pulled up in front
7 of me.

8 MR. FALVEY: This is something kids
9 don't do anymore, Jody, actually write
10 arithmetic.

11 A As a ballpark figure it would be about
12 \$240,000 over about 15 months, and it transferred
13 money to Long -- from Long Leaf Trading to cover
14 the SBA loan and any insurances that I had at the
15 Donelson Enterprises level.

16 BY MR. PLATT:

17 Q Those \$16,000 monthly transfers,
18 is that -- are those the only transfers that
19 Long Leaf Trading ever made to either Donelson
20 Enterprises or you?

21 A They would not make it to me because Long
22 Leaf Trading was only owned by Donelson Enterprises.
23 Any distributions to me would have been considered
24 wage.

Page 23

1 Q And what wages did you earn when you
2 owned Long Leaf Trading?

3 A I didn't get -- I didn't pay myself
4 for a very long period of time. So, I mean, it
5 would be in my tax return, but I think in 2018
6 it was maybe \$100,000 and in 2019 I want to say
7 \$50,000. I'd have to check the exact numbers,
8 but that's ballpark.

9 Q And that was your total compensation
10 from Long Leaf Trading during those two years
11 approximately?

12 A Approximately, yes.

13 Q I just want to click back to Exhibit 62
14 briefly. I'm going to scroll through -- I know
15 you've seen this document before. I'm going to go
16 to page 11. Actually, I'm going to go to page 10.
17 There's Item 4 titled Consideration.

18 A Yes.

19 Q And on paragraph 4.1, little B, it says,
20 "At the time of Closing, Purchaser will pay Seller
21 an upfront purchase price of \$1.475 million," and
22 that's in addition to the \$25,000 earnest money
23 that's reflected in little A. Was that the extent
24 of the consideration that Donelson Enterprises

Page 24

1 paid Timothy Evans to control all the issued
2 and outstanding stock of Long Leaf Trading?

3 A Yes, it was.

4 Q How did Donelson Enterprises come up
5 with the \$1.5 million?

6 A It took out an SBA loan through
7 Huntington Bank and also put in money from my
8 401(k).

9 Q What was roughly the breakdown between
10 the SBA loan and the money that you put in from
11 your own assets?

12 A My own assets were -- once again, I've
13 got to do some math. My own assets were 325,000,
14 and the loan was 1.265 because there was working
15 capital included in that.

16 Q On page 11 under Part V, which is titled
17 Operation of the Business, paragraph 5.4 is titled
18 Assets. Did those assets include all of Long Leaf
19 Trading's books and records?

20 A Yes, it does. I'm not sure -- I'm not
21 sure it's covered in that document -- or that line,
22 though. There --

23 Q Okay, that's helpful. Even if
24 it's not covered in paragraph 5.4 of the stock

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1 purchase agreement, your understanding is that
2 this document contemplates the transfer of all
3 of Long Leaf Trading's assets from Timothy Evans
4 to Donelson Enterprises?

5 A Yes.

6 Q That includes all their email records,
7 telephone recordings --

8 A Yes.

9 Q -- and other items? When did Long Leaf
10 Trading cease operations?

11 A December 2019.

12 Q Does Long Leaf Trading currently
13 hold any assets?

14 A The only assets it has is a very
15 small amount in a bank account and a receivable
16 from Tim Evans.

17 Q Is the receivable from Tim Evans --
18 or I should just ask you what is the receivable
19 from Tim Evans that you're describing?

20 A It relates to settlements, taxes
21 due that he owes the company to pay based on this
22 agreement.

23 Q What is -- what is the amount of the
24 receivable that you believe Timothy Evans owes

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1 Long Leaf Trading?

2 A Around \$84,000.

3 Q You said that Long Leaf Trading
4 ceased operations in December of 2019. At that
5 time did Long Leaf Trading hold any assets other
6 than the small amount of cash you just described
7 and the \$84,000 receivable from Timothy Evans?

8 A It held computers, probably five of them,
9 but no other assets.

10 Q Just the physical plant, physical working
11 stuff?

12 A Yeah, and we have had to remove
13 all of the hard drives of those computers, so
14 they're pretty much useless and storing of books
15 and records.

16 Q When you owned the company, Long
17 Leaf's primary business involved recommending
18 option trades to retail customers, is that right?

19 A Yes.

20 Q What about the Evans era, do you know
21 what Long Leaf's primary business was during the
22 Evans era?

23 A Based on the records during the time
24 period you're talking about, the primary business

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1 was as you said. They also had a lot of other --
2 and we had them too -- of self-traders, people who
3 would just trade on their own.

4 Q During the Evans era do you know the
5 breakdown in revenue between commissions associated
6 with self-traders and commissions associated with
7 the Time Means Money program?

8 A As I testified yesterday, I think
9 it's around 10 percent came from self-traders,
10 90 percent came from -- of the commissions that
11 came from Gain, 90 percent came out of the program,
12 and then you also had commissions from a CFD
13 dealer (inaudible) where he had introduced
14 a customer.

15 Q And for the CFD dealer, what proportion
16 of Long Leaf Trading's revenue during the Evans era
17 did that account for, do you know?

18 A I think it started -- it started
19 in 2016, and I would say in 2017 it was probably
20 a couple hundred thousand dollars in commissions.

21 Q And what's the total pie? I'd
22 like to compare the couple hundred thousand
23 dollars commissions to --

24 A Well, if you took the total commissions

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1 of the year and deducted the 200,000, the rest of
2 that all comes from Gain.

3 Q And do you know what that amount is?

4 A If you don't mind, if I can open up --
5 I could look at the financial records because I have
6 them.

7 Q Let's not do that for now because --

8 A I don't know the exact number, but it
9 was a couple million dollars of revenue, I mean,
10 a ballpark number, a couple million dollars of
11 revenue; \$200,000 of it was coming from the CFD
12 and the other 1.8 million was coming from Gain.
13 So 90 percent of that would be kind of the ballpark
14 number.

15 Q Okay. So sticking with the ballpark --
16 and I understand that you don't have the data stored
17 in your brain -- for the Evans era, including all
18 the revenue sources, what is your best estimate for
19 the revenue associated with the trading program,
20 like 85 percent?

21 A Probably 85 percent in 2017, and then
22 2016 and 2015 would be -- almost 100 percent would
23 be -- I mean, about 90 percent in those two years.

24 Q Thank you. And moving forward in

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1 time to your ownership, Long Leaf Trading's revenue
 2 was entirely based on commissions it received,
 3 is that right?
 4 A I'm sorry. I didn't catch the second
 5 word.
 6 Q Let me ask it a different way.
 7 Did Long Leaf -- when you owned the company, did
 8 Long Leaf Trading have any sources of revenue other
 9 than commissions associated with options trading?
 10 A Yes. For a short period of time we --
 11 the CFD dealer revenues came in, but they ended in
 12 February of 2018.
 13 Q After February of 2018 did Long Leaf
 14 Trading have any other sources of revenue other
 15 than commissions associated with options trading?
 16 A Yes, it still had revenue associated
 17 with self-traders who were trading futures options.
 18 We weren't providing any information -- we weren't
 19 providing any recommendations to them.
 20 Q How long did Long Leaf continue to
 21 have self-trading customers when you owned the
 22 company?
 23 A Until we were -- we became a guaranteed
 24 introducing broker because we could not have two

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1 clearing firms.
 2 Q Remind me when you switched to Cunningham
 3 approximately?
 4 A We switched to Cunningham in August
 5 of 2018. However, we did not become a guaranteed
 6 introducing broker until March of 2019.
 7 Q So for the period December 2017
 8 through February 2018 -- strike that. Let me
 9 back up. Is it fair to say that the majority of
 10 Long Leaf Trading's revenue when you owned the
 11 company came from commissions associated with the
 12 trading program?
 13 A That is true.
 14 Q From December 2017 through February
 15 2018 what proportion of Long Leaf Trading's revenue
 16 came from commissions associated with the trading
 17 program?
 18 A 90 percent.
 19 Q Between March of 2018 and the date
 20 on which Long Leaf became a guaranteed introducing
 21 broker, what proportion of Long Leaf Trading's
 22 revenue was associated with commissions connected
 23 to the trading program?
 24 A Still 90 percent. We kept all of our

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1 self-traders at Gain.
 2 Q So the fact that the CFD dealer dropped
 3 out didn't have a material impact on the revenue
 4 breakdown?
 5 A It dropped out in early of 2018. I think
 6 the last month was February.
 7 Q Right. So --
 8 A It didn't have a material impact past
 9 that point.
 10 Q That's helpful. I think I may have
 11 misstated my question. I meant to ask between
 12 March of 2018 and the date on which Long Leaf
 13 Trading became a guaranteed introducing broker,
 14 what is the proportion of Long Leaf Trading's
 15 revenue that was associated with commissions
 16 from the trading program?
 17 A Like I said, 90 percent is an estimate,
 18 yeah.
 19 Q Okay. And then after Long Leaf Trading
 20 became a guaranteed introducing broker, was all of
 21 its revenue associated with the trading program?
 22 A Yes, it was.
 23 Q When you owned the company, Mr. Donelson,
 24 there was a staff of brokers at Long Leaf Trading,

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1 correct?
 2 A Correct.
 3 Q How many brokers worked at Long Leaf?
 4 A Twelve.
 5 Q Did that change over time?
 6 A Yes.
 7 Q Describe how it changed over time.
 8 A We let people go through either
 9 financial or people -- some people left. We
 10 brought on only two brokers during that time.
 11 One left, and I can't even remember his name,
 12 but he came on, he got qualified, and then his
 13 wife worked for Morgan Stanley and didn't want him
 14 working in the same industry so he had to leave.
 15 But usually it was a question of money, how much
 16 money we were making and whether we could continue
 17 to pay people and were they performing.
 18 Q Is it fair to summarize the broker
 19 staff at Long Leaf Trading as being up to 12 in
 20 2018 and no more than 3 in 2019?
 21 A That is correct.
 22 Q What about the Evans era, how many
 23 brokers worked at Long Leaf during the Evans era
 24 or is that a topic that you can't really speak to?

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1 A I would have to put together at any
 2 one point in time how many people were there, but
 3 they went through a lot of brokers.
 4 Q Okay. So it's a topic that's listed
 5 on the notice. So we provided notice that we're
 6 going to ask questions about the operation of the
 7 trading program. So, you know, if your answer is,
 8 you know, I would have to go do more work to figure
 9 it out, that's fair. But it sounds like you're not
 10 prepared to answer that question today, right?
 11 A On the operation, how it actually
 12 worked, I can give you how it was described to
 13 me but I can't -- the specifics about this trade or
 14 that trade, I wouldn't have any firsthand knowledge
 15 of it.
 16 Q I'm asking about the broker staff
 17 and how many brokers worked at Long Leaf during
 18 the Evans era and did that change over time. Do you
 19 have that --
 20 A It definitely changed over time.
 21 I can't tell you what the maximum was or the
 22 minimum was, but I have a record of all the brokers
 23 that ever worked there and when they started and
 24 when they ended.

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1 Q What were the brokers' duties during the
 2 time period you owned the company?
 3 A They were to solicit new customers,
 4 manage their current customers, write trading
 5 recommendations. That was their primary duties.
 6 And we would also have them do some research, market
 7 research for us in terms of what is going on in this
 8 market or what is going on in that market.
 9 Q Just so I understand then, Long Leaf
 10 brokers during the time you owned the company
 11 solicited customers to open new accounts, right?
 12 A Correct.
 13 Q And they disseminated trading
 14 recommendations to solicit orders from existing
 15 customers, right?
 16 A Correct.
 17 Q And that's probably like 98 percent
 18 of their daily duties, is that fair?
 19 A Yeah, a very high proportion of their
 20 duties.
 21 Q What about during the Evans era,
 22 what did the brokers spend their days doing during
 23 the Evans era?
 24 A From the phone records and everything

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1 else, it was very similar.
 2 Q During the Evans era which brokers were
 3 responsible for disseminating trade recommendations
 4 to customers?
 5 A Are you talking about specific names or
 6 are you talking about as a general class of people?
 7 I'm just clarifying.
 8 Q I'd like you to identify the Long
 9 Leaf brokers during the Evans era who disseminated
 10 trading recommendations to customers. And if that's
 11 information that you don't know, that's an
 12 acceptable answer.
 13 A I don't know that I would know all of
 14 them but James Leeney, Vince -- I can't remember
 15 his last name, Jeremy Ruth. I have the list based
 16 on the trading data that I have who the account was
 17 assigned to at that time. So I can pull that up
 18 of who would send those up --
 19 Q How would you know about -- how
 20 would you know which brokers disseminated trading
 21 recommendations during the Evans era? What would
 22 be your source of knowledge?
 23 A The Gain system has a broker code
 24 assigned to each customer, so it would tell me

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1 which broker was in charge of that customer.
 2 Q Are you assuming that Long Leaf
 3 Trading operated in the same way during the Evans
 4 era as it did during the Donelson era in that each
 5 broker disseminated all the trading recommendations
 6 for their assigned customers?
 7 A I'm making that assumption, yes.
 8 Q Do you know if that's actually true?
 9 A 100 percent, no, but I would say I'm fairly
 10 certain that that's the way it worked.
 11 Q Do you think it worked that way for
 12 the entire Evans Time Means Money period, so May
 13 of 2015 through November of 2017?
 14 A Yes, I'm fairly certain that's the way
 15 it worked.
 16 Q And other than the broker code
 17 on the Gain records, what's the basis of your
 18 understanding? What are you basing your assumption
 19 on?
 20 A There are email records, there are other
 21 records of this person sending this recommendation
 22 to this individual, which concurs with what the Gain
 23 record says.
 24 Q So email records and you said other

<p style="text-align: right;">Page 37</p> <p>1 records. What kinds of other records?</p> <p>2 A Phone records where somebody would</p> <p>3 call them. The only times -- and why I say I'm</p> <p>4 fairly certain is should a broker leave and they</p> <p>5 reassign the account, sometimes the timing between</p> <p>6 what happens with the Gain code and who's doing that</p> <p>7 may not be in sync.</p> <p>8 Q Did you review Long Leaf broker emails</p> <p>9 from the Evans era to determine that the brokers</p> <p>10 transmitted trading recommendations to customers?</p> <p>11 A I did. The primary record, though,</p> <p>12 is -- was sent through the CRM system, which did</p> <p>13 not store it in the email system, but you could</p> <p>14 bring up what was sent through that system. That's</p> <p>15 when I say the other records.</p> <p>16 Q Can you explain what information</p> <p>17 in the CRM system leads you to believe that during</p> <p>18 the Evans era the broker associated with the Gain</p> <p>19 code disseminated the trading recommendations to</p> <p>20 their respective customers? This may sound like</p> <p>21 a really dumb question, but I'm drilling down on</p> <p>22 what's the information in the system.</p> <p>23 A The CRM system had an email system --</p> <p>24 an email capability in it. They would set up</p>	<p style="text-align: right;">Page 39</p> <p>1 went out, the blasted email. That's how I</p> <p>2 triangulate the --</p> <p>3 Q That's helpful.</p> <p>4 A But if they got this -- if they got the</p> <p>5 approval over the phone, I wouldn't see that for</p> <p>6 that specific person. Plus we had the trade sheets</p> <p>7 that mark who -- that's also the stamped approvals.</p> <p>8 I'm not using the right words, but for each trade</p> <p>9 there would be a trade stamped copy that said this</p> <p>10 person agreed to it and time stamped here.</p> <p>11 Q Got it. So I just want to circle back to</p> <p>12 the CRM record -- the CRM log you're referencing.</p> <p>13 Did each broker have specific records that were</p> <p>14 associated with emails that were disseminated from</p> <p>15 their accounts?</p> <p>16 A Yes.</p> <p>17 Q Okay. So --</p> <p>18 A They were assigned -- the lead name was</p> <p>19 assigned to an individual.</p> <p>20 Q So, for example, you could look at James</p> <p>21 Leeney's CRM information and see that he transmitted</p> <p>22 an email to customers in the form of the template</p> <p>23 that you recognize as the trading recommendation</p> <p>24 during the Evans era?</p>
<p style="text-align: right;">Page 38</p> <p>1 the recommendation in that system. They would</p> <p>2 assign, you know, this would send this email to this</p> <p>3 customer about this recommendation, and it's stored</p> <p>4 as an email -- it's not stored as an email record.</p> <p>5 It's stored as a log record. I know I'm getting a</p> <p>6 little wonky here, but that's -- it's not a simple</p> <p>7 I can total it up and here's what it says. It's</p> <p>8 this person sent it to this person at this point</p> <p>9 in time.</p> <p>10 Q That's very helpful. And the CRM log</p> <p>11 information, does it include data or information</p> <p>12 about what the content of the body of the email is?</p> <p>13 A It refers to the template that was</p> <p>14 being used. However, since he would use the same</p> <p>15 template over and over, it wouldn't necessarily --</p> <p>16 this is why I stopped using it. It would bring</p> <p>17 up the latest recommendation, even if it was sent</p> <p>18 two years ago.</p> <p>19 Q And what is the template associated</p> <p>20 with the trading recommendations that was in use</p> <p>21 during the Evans era?</p> <p>22 A It's -- you'll see in emails that were</p> <p>23 returned to the -- so if a customer agreed to the</p> <p>24 trade via email, you would see the actual email that</p>	<p style="text-align: right;">Page 40</p> <p>1 A Correct.</p> <p>2 Q And do you remember seeing that information</p> <p>3 for James Leeney?</p> <p>4 A Yes.</p> <p>5 Q What about Jeremy Ruth?</p> <p>6 A Yes.</p> <p>7 Q During the Evans era did Long Leaf Trading</p> <p>8 disseminate results of trades to customers?</p> <p>9 A I don't have -- I don't have any</p> <p>10 records of them in a broad sense sending out</p> <p>11 results of trades.</p> <p>12 Q What about in specific or one-off</p> <p>13 cases, are you aware of any of those instances?</p> <p>14 A I have -- yeah, I have seen records</p> <p>15 where they talk about how a specific trade did or</p> <p>16 another trade did but not any type of historical</p> <p>17 record of here's how every trade did within a</p> <p>18 certain customer's account, nor have I found any</p> <p>19 record that they kept that.</p> <p>20 Q To clarify your last statement,</p> <p>21 you're not aware of any records maintained by</p> <p>22 Long Leaf tracking the performance of their trading</p> <p>23 recommendations?</p> <p>24 A Correct.</p>

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1 Q When you bought the company -- strike
2 that. I'll come back to it later. I think I've
3 asked you this, Mr. Donelson, but I'm going to
4 ask it again. I apologize. You testified that
5 during your ownership, Long Leaf brokers' primary
6 duties, 90 percent of their day was spent soliciting
7 new customers or disseminating and dealing with
8 trading recommendations. Was that breakdown similar
9 for the Evans era?

10 A I can't really say. I wasn't there
11 when all Evans records and phone records and --

12 Q I understand. When you owned the company,
13 describe the process by which Long Leaf solicited
14 prospective customers.

15 A There was a -- you had openers who
16 would basically call and the target was 200 calls
17 a day, just realizing that 200 calls doesn't mean
18 you talked to 200 people. The pickup rate was
19 really low, you know, probably under 5 percent or
20 lower. Then they would set up a time for them to
21 do a demo. So they would talk to them and say,
22 you know, don't take much time but would you like
23 to learn more. Then they would -- then the opener
24 would perform the demo, which is an introduction

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1 to the program, and set a custom. And that
2 would really get into more details about the
3 trading, more details about the program. And
4 then a closer would then do the custom, which
5 may or may not include a Power Point presentation
6 depending on the actual individual that they're
7 talking with. Then that would -- if they joined the
8 company, then they would set a time to go through
9 the application, which was a Gain application at
10 first, which was done all online, and then we'd set
11 up the funding and the funding would come to Gain
12 eventually. That was kind of the solicitation
13 process.

14 Q And was that process the same across
15 the approximately two years that you owned the
16 company?

17 A We changed that to get from the
18 multiple phone calls with multiple people involved,
19 and we also set up that the funding would be done
20 through a central person and not done through each
21 and every broker.

22 Q When did this change to get away from
23 multiple phone calls take place?

24 A I would say late summer 2018.

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1 Q And after --

2 A Yeah.

3 Q So after approximately summer of 2018,
4 how was the sales process different?

5 A We were combining some of the what
6 we called the demo and the custom into more of
7 a broader conversation and also would try to see
8 if they wanted to stay on the line and talk to a
9 senior broker, Scott Gecas, regarding questions
10 about options and things like that which were more
11 technical in nature so that we could get into --
12 my concern was always the first presentation didn't
13 tell you much of anything. It just -- it wasn't
14 robust enough.

15 Q Was there still an opener who would
16 then sort of set that second call after that late
17 summer of 2018 time period?

18 A There were a few because that would
19 usually be the role of somebody new to the company.
20 So we wouldn't throw them into the deep end right
21 away.

22 Q How about like in 2019 when there
23 was just three brokers and yourself, how did the
24 solicitation process work in 2019?

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1 A They would still do the calling obviously,
2 but we had changed to a new CRM which allowed us to
3 be more targeted about who we would call. The lead
4 information did not have any demographic information
5 in it. It was just merely a phone number, an email
6 address and a name. However, the system could check
7 if that's a valid email address, if that's a valid
8 phone number, and so they would have a shorter list
9 of people to call on a daily basis. But they would
10 do the opening of calling them, a very short
11 introduction and then setting up a time to go
12 through the presentation. They would not do the
13 presentation on the first call.

14 Q Understood. And during these multistep --
15 during these multiple steps in the sales process
16 at Long Leaf Trading when you owned the company,
17 the brokers were instructed to follow scripts,
18 is that right?

19 A They were not instructed to follow
20 scripts. I didn't even know about the scripts
21 until April of 2018.

22 Q So before April of 2018 how did the
23 brokers know what to say?

24 A Well, they had a script that I did

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1 not have, but they were going through and using
 2 that script.
 3 Q And sometime in April of 2018 you
 4 became aware of the script that the brokers were
 5 following, right?
 6 A Correct.
 7 Q Who wrote that script?
 8 A It was a script that was there in
 9 place before I bought the firm. I don't know
 10 who -- I assume Tim Evans wrote it, but I don't
 11 know who exactly wrote it. I was told Jeremy Ruth
 12 wrote it, but that's -- that's all I know.
 13 Q Who told you Jeremy Ruth wrote the scripts?
 14 A A couple of the existing brokers that
 15 were there prior to. I think James Hatzigiannis
 16 might have told me that, but I do not have like who
 17 actually authored it.
 18 Q And then in April 2018 you discovered
 19 that these scripts existed and that's what the
 20 brokers were following on their --
 21 A Yeah.
 22 Q -- on the multiple steps in the sales
 23 process. And I understand that there came a time
 24 when the solicitation materials were revised

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1 at Long Leaf Trading. Were there new scripts
 2 or talking points that were used by the brokers
 3 after April of 2018 at some point?
 4 A Yes, yes, there was.
 5 Q And who wrote any revised solicitation
 6 materials?
 7 A On the talking points it would have
 8 been me.
 9 Q Did anybody else play a role in any of
 10 the revisions of Long Leaf Trading's solicitation
 11 materials after --
 12 A I had Andrew Nelson helping me,
 13 but I also had the brokers helping me with do
 14 you say it this way, do you say it that way. I'm
 15 not a salesperson, so trying to make sure that it --
 16 how that should work.
 17 MR. FALVEY: Let Jody finish his questions.
 18 THE WITNESS: Oh, I'm sorry.
 19 BY MR. PLATT:
 20 Q So it sounds like it was a team effort
 21 to revise the solicitation materials at some time
 22 after April of 2018. Mr. Nelson was involved, the
 23 other brokers were involved and you were involved,
 24 is that fair?

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1 A Correct.
 2 Q During the Evans era did the brokers
 3 also follow scripts for the multiple steps? This
 4 is another one, Mr. Donelson, if you don't know,
 5 then that's your answer.
 6 A I wasn't there. I don't know, other than
 7 from phone records.
 8 Q Well, did you ever review phone
 9 records and come to an understanding that the
 10 Long Leaf brokers were following scripts from the
 11 Evans era?
 12 A For the time period I listened to them,
 13 yeah, and that was 2017.
 14 Q And in 2017 were the brokers following
 15 the same script that they followed after you became
 16 the owner of the company in 2018?
 17 A I really don't remember if it's the exact
 18 same record or not.
 19 Q Is it similar?
 20 A I would say it is similar.
 21 Q And that's based on your review
 22 of recorded phone calls and your awareness of what
 23 the script was in April of 2018, right?
 24 A Right, yes.

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1 Q Just to summarize that testimony,
 2 your understanding is that before you bought the
 3 company in 2017, Long Leaf brokers followed the
 4 same scripts and solicitation materials that they
 5 followed through at least April of 2018, is that
 6 accurate?
 7 A I would say similar. I don't know if
 8 they're exactly the same.
 9 Q Materially the same?
 10 A I would say materially the same.
 11 Q Okay, thank you.
 12 MR. FALVEY: Hey, Jody, if you get
 13 to a breaking point, you know, I -- sorry,
 14 but I need to use the rest room.
 15 MR. PLATT: Yeah, let's take five.
 16 And just in the interest of not going until --
 17 let's go off the record.
 18 (Discussion off the record.)
 19 (Whereupon a recess was taken from
 20 10:17 a.m., to 10:25 a.m., after
 21 which the following proceedings
 22 were had:)
 23 Q Mr. Donelson, when you owned the
 24 company -- this may seem like an overly simple

<p style="text-align: right;">Page 49</p> <p>1 question -- Long Leaf Trading solicited members of</p> <p>2 the general public to open accounts and participate</p> <p>3 in Long Leaf's trading program, right?</p> <p>4 A Yes.</p> <p>5 Q Is the same true for the Evans era?</p> <p>6 A Can you ask the question again so that</p> <p>7 I'm clear? I'm sorry.</p> <p>8 Q Sure. During the Evans era did Long</p> <p>9 Leaf solicit members of the general public to open</p> <p>10 accounts and participate in Long Leaf's trading</p> <p>11 program?</p> <p>12 A Yes.</p> <p>13 Q During the time period that you</p> <p>14 owned the company, Mr. Donelson, Long Leaf came</p> <p>15 up with its own trading recommendations for the</p> <p>16 trading program inhouse, right?</p> <p>17 A Yes, except for one month.</p> <p>18 Q What month was that?</p> <p>19 A January of 20 -- no, December of 2017</p> <p>20 where we employed a Series 3 broker to provide the</p> <p>21 recommendations.</p> <p>22 Q What was the name of that individual?</p> <p>23 A Jim Barrett.</p> <p>24 Q Can you spell the last name, please.</p>	<p style="text-align: right;">Page 51</p> <p>1 he was not comfortable providing recommendations on.</p> <p>2 Q Did Barrett design iron condors?</p> <p>3 A I think so. It was the trades that</p> <p>4 were placed in December of 2017. I think there</p> <p>5 was an iron condor. There's an iron butterfly.</p> <p>6 They were credit spreads.</p> <p>7 Q And when you say that Long Leaf</p> <p>8 wanted to move to strategies that Barrett was</p> <p>9 not comfortable with, what are you describing?</p> <p>10 What changed?</p> <p>11 A Going from credit spreads to debit</p> <p>12 spreads, broken wing butterflies, broken wing</p> <p>13 condors, volatility swaps, those type of trades.</p> <p>14 Q Was Jim Barrett providing trading</p> <p>15 recommendations to any other companies during</p> <p>16 December of 2017 that you know of?</p> <p>17 A None that I know of.</p> <p>18 Q What was he doing during that time</p> <p>19 period? Was he just an independent contractor out</p> <p>20 in the world?</p> <p>21 A He was an independent contractor working</p> <p>22 for another introducing broker.</p> <p>23 Q Which introducing broker did he work for?</p> <p>24 A I would have to look that up. I knew</p>
<p style="text-align: right;">Page 50</p> <p>1 A B-a-r-r-e-t-t.</p> <p>2 Q You said you employed Mr. Barrett.</p> <p>3 Did you pay him a salary or a consulting fee for</p> <p>4 that time period?</p> <p>5 A I just paid him a fee. I did not --</p> <p>6 he was not an employee. He was a consultant.</p> <p>7 Q Like an independent contractor, is that</p> <p>8 fair?</p> <p>9 A Correct.</p> <p>10 Q How did you come to hire or contract</p> <p>11 with Mr. Barrett in December of 2017 to design the</p> <p>12 trading recommendations?</p> <p>13 A Mr. Evans knew him from previous</p> <p>14 roles. He is a trader for another firm and had</p> <p>15 multiple conversations with him to develop the</p> <p>16 trades.</p> <p>17 Q Did Jim Barrett develop trading</p> <p>18 recommendations for Long Leaf Trading during</p> <p>19 the Evans era?</p> <p>20 A I don't know.</p> <p>21 Q Why didn't Long Leaf Trading continue</p> <p>22 to contract with Jim Barrett after December of 2017</p> <p>23 to develop trading recommendations?</p> <p>24 A We were moving to a different trade that</p>	<p style="text-align: right;">Page 52</p> <p>1 it at one time.</p> <p>2 Q Did he design multi-legged options trades</p> <p>3 during December 2017 for that other introducing</p> <p>4 broker?</p> <p>5 A I do not know. He did not tell me.</p> <p>6 Q What is your understanding of the nature</p> <p>7 of Jim Barrett's professional duties in or around</p> <p>8 December 2017 other than designing trades, trades</p> <p>9 for Long Leaf?</p> <p>10 A He was working as an AP of a separate</p> <p>11 firm -- I'm sorry. I can't remember the name of</p> <p>12 it -- and providing trading recommendations or</p> <p>13 trading for that firm.</p> <p>14 Q But it sounds like you actually don't know</p> <p>15 what he was doing at the other firm?</p> <p>16 A Not specifically, no.</p> <p>17 Q During the Evans era did Long</p> <p>18 Leaf Trading design its trading recommendations</p> <p>19 inhouse?</p> <p>20 A I believe so. I don't -- can't be certain.</p> <p>21 Q What's your belief based on?</p> <p>22 A I don't see any payments in the records</p> <p>23 to any third party that I didn't recognize.</p> <p>24 Q You're not aware of any payments that Long</p>

<p style="text-align: right;">Page 53</p> <p>1 Leaf made to any service providers to compensate 2 them for providing trading recommendations? 3 A Correct. 4 Q During the Evans era? 5 A Correct. 6 Q Do you know who at Long Leaf Trading 7 was responsible for designing the trades in the 8 trading program during the Evans era? 9 A Timothy Evans. 10 Q What's that belief based on? 11 A That's what he told me. 12 Q Anyone else besides Evans participate 13 in designing the recommended trades during the Evans 14 era that you're aware of? 15 A Not that I'm aware of. 16 Q When you owned the company, it was 17 the brokers' duties -- it was among the brokers' 18 duties to disseminate the trading recommendations 19 to customers, right? 20 A Correct. 21 Q And they did that by email, is that 22 correct? 23 A Correct. 24 Q Any other methods of disseminating</p>	<p style="text-align: right;">Page 55</p> <p>1 A Yes, I am. 2 Q You're aware that APs are required to 3 be supervised? 4 A Yes, I am. 5 MR. PLATT: I'm going to show you 6 a document that I'm going to mark as CFTC 7 Exhibit 491. 8 (Whereupon CFTC Exhibit No. 491 9 was marked for identification.) 10 Q Do you recognize this as an email 11 chain between you and Tim Evans on or around 12 February 21, 2018? The subject line is Update to 13 NFA Registration. Do you see that, Mr. Donelson? 14 A Yes, I do. 15 Q I'm going to scroll down to the first 16 few emails in the chain. The email chain starts 17 at the bottom in chronological order. You write, 18 "Tim, I want to update the NFA info this week. Let 19 me know when you have time," and Tim responds, "I 20 think you may need the Series 3 to take on all those 21 positions. Do you have an exam scheduled?" And 22 then you write back, "I spoke with Becky yesterday 23 and have a pretty good idea of what I can and cannot 24 do until I have a Series 3." Who is Becky? Is that</p>
<p style="text-align: right;">Page 54</p> <p>1 the trading recommendations during your ownership 2 of the company besides email? 3 A In the first month we used the 4 CRM system that I described earlier, and then 5 we ceased using it and went to sending PDFs via 6 email. 7 Q And the CRMs that you're describing, 8 that also was an email functionality, is that -- 9 am I remembering your testimony correctly? 10 A Yes, it does have one but it -- yes. 11 Q And for sending out the trading 12 recommendations through the CRM, those would have 13 been sent by email, right? 14 A Yes, they're sent through email. Yeah, 15 they are an email. 16 Q What about during the Evans era, 17 how did Long Leaf Trading communicate its trading 18 recommendations to customers? 19 A I really can't be certain how they did it. 20 Q Okay, that's fair. Mr. Donelson, 21 do you have an understanding of whether NFA rules 22 require APs of introducing brokers to be supervised 23 with respect to their solicitation of customers and 24 customer orders?</p>	<p style="text-align: right;">Page 56</p> <p>1 Ms. Wing? 2 A That is Ms. Wing. 3 Q And what is a Series 3? 4 A Series 3 is a test that you have to pass 5 to become an AP. It covers the futures trading, 6 compliance. 7 Q And AP stands for associated person, right? 8 A That is correct. 9 Q What do you recall about what Ms. Wing 10 told you about what you can or -- what you could or 11 could not do without a Series 3 license? 12 A I could not solicit clients. That 13 was -- that's what I remember, nor could I manage 14 or supervise APs. 15 Q Yesterday I think you testified 16 that from February 2018 onward you were the 17 chief compliance officer of Long Leaf Trading and 18 that Brian Adams and Scott Gecas each performed 19 compliance and supervisory tasks, is that right? 20 A That is correct. 21 Q Between December 2017 and June 2018, 22 right, so the first approximately six months you 23 owned the company, did you meet with newly hired 24 brokers to discuss your expectations for them and</p>

<p style="text-align: right;">Page 57</p> <p>1 the goals and the company's sales processes?</p> <p>2 A I don't believe we hired anybody in that</p> <p>3 time frame.</p> <p>4 Q So I'm asking a slightly different</p> <p>5 question than whether Long Leaf Trading hired</p> <p>6 anyone during that time frame. I'm asking if there</p> <p>7 was a newly hired employee around that time, so</p> <p>8 maybe hired in November or October of 2017, did you</p> <p>9 meet with them to discuss expectations, goals and</p> <p>10 the company's sales processes?</p> <p>11 A I met with each one to talk about</p> <p>12 my vision of where the company will go, but I and</p> <p>13 them would develop the goals.</p> <p>14 Q Is that a no, you did not meet with newly</p> <p>15 hired brokers to discuss expectations, goals and the</p> <p>16 company's sales processes between December 2017 and</p> <p>17 June 2018?</p> <p>18 A No.</p> <p>19 MR. PLATT: I'm going to show you what</p> <p>20 I'm marking as CFTC Exhibit 492.</p> <p>21 (Whereupon CFTC Exhibit No. 492</p> <p>22 was marked for identification.)</p> <p>23 Q Mr. Donelson, can you see</p> <p>24 Exhibit 492? It's a calendar invitation from</p>	<p style="text-align: right;">Page 59</p> <p>1 are you -- what things do you need to be trained on.</p> <p>2 Q Including how to run through the sales</p> <p>3 process?</p> <p>4 A That would be part of it.</p> <p>5 Q I'm going to go back to 492 for</p> <p>6 a second. This is the invitation to Dillman,</p> <p>7 Janyk, Stemper and Mooney for the new opener</p> <p>8 meeting. These attendees, Mr. Donelson, these</p> <p>9 are newly hired Long Leaf brokers, right, as of</p> <p>10 that date?</p> <p>11 A They were hired in October of last year --</p> <p>12 of the year before.</p> <p>13 Q So would you disagree with categorizing</p> <p>14 them as recent hires?</p> <p>15 A Yeah, I would -- are they recent hires,</p> <p>16 yes. Are they brand new hires, no.</p> <p>17 Q Okay. And they're brokers, correct?</p> <p>18 A They're APs, yes.</p> <p>19 Q What expectations and goals did you</p> <p>20 discuss with these four APs who were hired three</p> <p>21 months before this meeting was scheduled to take</p> <p>22 place?</p> <p>23 A I'm sorry. Three months before what?</p> <p>24 Q These four APs were recipients of your</p>
<p style="text-align: right;">Page 58</p> <p>1 you to four recipients, Ryan Dillman, Chris Janyk,</p> <p>2 Alexander Stemper and Shawn Mooney dated January 5,</p> <p>3 2018. Do you see that?</p> <p>4 A Yes.</p> <p>5 Q The subject is New Opener Meeting, right?</p> <p>6 A Yeah, yes.</p> <p>7 Q And the comments in the calendar</p> <p>8 invitation reads, "Discuss expectations and goals.</p> <p>9 New Process for next two weeks." Do you see that?</p> <p>10 A Yes.</p> <p>11 Q Did you attend this meeting?</p> <p>12 A Yes.</p> <p>13 Q Between December 2017 and June</p> <p>14 of 2018 did you meet with the Long Leaf broker</p> <p>15 staff to engage the brokers on sales targets, data</p> <p>16 quality improvements and training?</p> <p>17 A Yes.</p> <p>18 Q What does it mean to engage the brokers</p> <p>19 on training?</p> <p>20 A It was more of what training they felt</p> <p>21 they needed in addition to what's being provided.</p> <p>22 Q Training with respect to what topics?</p> <p>23 A Pretty much anything to do with the</p> <p>24 sales process. In other words, if you're new,</p>	<p style="text-align: right;">Page 60</p> <p>1 meeting invitation. I think you testified that</p> <p>2 they were hired around October 2017?</p> <p>3 A Yes, I believe so.</p> <p>4 Q And one of the agenda items that you</p> <p>5 wrote is discuss expectations and goals, correct?</p> <p>6 A Correct.</p> <p>7 Q What expectations and goals did you</p> <p>8 discuss with these four brokers at the new opener</p> <p>9 meeting that occurred on Friday, January 5, 2018?</p> <p>10 A Basically what my overall expectations</p> <p>11 for all employees are and also to engage them in</p> <p>12 understanding, given the goals that I inherited,</p> <p>13 whether those are the right goals. This was me</p> <p>14 engaging all employees in these type of</p> <p>15 conversations when I first got there.</p> <p>16 Q That's helpful. And what goals did</p> <p>17 you describe to your broker staff around January</p> <p>18 of 2018?</p> <p>19 A The goals that were -- at that time</p> <p>20 were X number of calls, X number of this, X number</p> <p>21 of that. And I was trying to understand what gets</p> <p>22 in the way of achieving those goals, are those</p> <p>23 realistic goals, are they -- do they lead to what</p> <p>24 we're trying to get done.</p>

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1 Q And what were you trying to get done?

2 A Well, obviously you want to bring
3 in more clients. However, there's multiple ways
4 to do that, and the method I saw was just grinding,
5 grinding, grinding through hundreds and hundreds
6 of names that didn't seem to be overly productive
7 as I'm trying to understand the processes of the
8 firm.

9 Q And so what were the goals that
10 you communicated to your broker staff at this
11 new opener meeting? Was it more like rather than
12 grinding through calls, for each call you can maybe
13 take more care to describe the trading program?
14 Like what -- I don't understand what the shift was.

15 A One of the things that came out
16 of that meeting is better data around the lead
17 list and I -- there was a lot of data cleanup that
18 needed to be in there. They would get redundant
19 names, they would get names for people outside
20 of the United States, and it just gets in the way
21 of the process.

22 Q What about this next agenda item,
23 new process for next two weeks? Do you remember
24 what that was?

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1 A We were introducing the shift from
2 the broker doing the funding and application calls
3 to an individual -- a separate individual doing
4 that.

5 Q And at this new opener meeting you
6 described the new process and how it would work
7 to the new brokers, is that fair?

8 A Correct.

9 Q Between December 2017 and June of 2018
10 did you conduct individual performance reviews with
11 Long Leaf brokers?

12 A I did with Scott Gecas. He's the sales
13 manager.

14 Q Scott Gecas is -- I apologize. I cut
15 you off.

16 A Sales manager is Scott Gecas. He and
17 I both did the performance reviews so I could hear
18 what was going on.

19 Q So your testimony is that you and
20 Scott Gecas jointly performed -- jointly conducted
21 performance reviews of the brokers?

22 A Correct.

23 Q Between December 2017 and June of 2018,
24 right?

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1 A We continued that through 2018. We would
2 always do a joint review.

3 Q And just to be clear, that occurred
4 between December 2017 and December of 2018 -- and
5 June of 2018, right?

6 A Yes.

7 Q Is it fair to characterize your
8 role between December 2017 and June of 2018 at
9 Long Leaf Trading as encompassing oversight of the
10 sales organization at Long Leaf Trading?

11 A I had oversight of Scott and -- who ran
12 the sales organization, yes.

13 Q So you're at the top of the pyramid.
14 Even if Gecas is between the APs and you, you're
15 at the top in charge of the sales organization at
16 Long Leaf Trading for all relevant time periods that
17 you owned the company, right?

18 A I'm the owner of the company, yes. I'm
19 on top of the pyramid.

20 Q And in that role one of your
21 responsibilities was overseeing the sales
22 organization at Long Leaf at all relevant times,
23 right?

24 A Overseeing the sales manager, yes.

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1 Q What's the distinction you're drawing
2 between overseeing the sales manager and overseeing
3 the sales organization?

4 A I wasn't directly in charge of the
5 sales force. I was directly in charge of Scott
6 Gecas.

7 Q What's the difference between like
8 indirect and direct? I don't get it.

9 A Scott could discipline people underneath
10 him. I was focused on Scott Gecas, making sure that
11 he was managing the sales force.

12 Q Do you think you ever told anyone
13 that you oversaw the sales organization at Long Leaf
14 Trading between December 2017 and June of 2018?

15 A I'm sorry. Did you say I or he or --
16 I'm sorry. I didn't --

17 Q Do you think that you have ever
18 described your role at Long Leaf Trading between
19 December of 2017 and June of 2018 as encompassing
20 oversight of the sales organization at Long Leaf
21 Trading?

22 A Yes, it's possible I did say that.

23 Q And if you said it, it was because you
24 believed it, right?

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1 A Yes.
 2 MR. PLATT: I'm going to show you
 3 what I'm going to mark as CFTC Exhibit 493.
 4 (Whereupon CFTC Exhibit No. 493
 5 was marked for identification.)
 6 Q You can see this is an email that --
 7 the top email is forwarded from btadams21 to a
 8 guy named Mike Leonard. His email address looks
 9 like it's a lawyer's email address, but I'm
 10 going to scroll down to show you that the bulk of
 11 Exhibit 493 is an email exchange between you and
 12 Brian Adams on June 12, 2018. Do you agree with
 13 that?
 14 A Yes, that's what it is.
 15 Q And Brian Adams yesterday you testified
 16 was -- I think you testified generally that he was
 17 the sales manager during the Evans era and he was
 18 more of in a compliance role during your ownership
 19 of the company. Is that accurate or --
 20 A That is correct.
 21 Q So here's your response to Adams. You
 22 sent it from your -- from jimdonelson1420@gmail.
 23 That's your personal email address, correct?
 24 A Yes.

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1 Q Why did Brian Adams send this email,
 2 subject line Termination from Long Leaf, to your
 3 personal email address and not your Long Leaf
 4 Trading email address?
 5 A You'd have to ask him. I don't know.
 6 Q You didn't tell him to send the email
 7 to your Gmail address?
 8 A Once he engaged his lawyer I told him to
 9 send it to my personal email address.
 10 Q Why did you tell him to do that?
 11 A Because it could have legal issues
 12 involved with it. Probably a bad choice on my
 13 part but ...
 14 Q Is it fair to summarize your testimony
 15 just now, Mr. Donelson, that you wanted to keep
 16 the potential legal issues with Adams off of like
 17 the Long Leaf server? Is that like in summary what
 18 you're saying?
 19 A Yes.
 20 Q Did you ever direct anyone else to
 21 send emails to your Gmail address as opposed to
 22 your Long Leaf Trading address?
 23 A Not that I remember.
 24 Q Did you ever use your Gmail address for

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1 any other Long Leaf Trading communications other
 2 than this email exchange that we see with Mr. Adams?
 3 A I would sometimes send files from
 4 myself to myself so I could work on them at home.
 5 Q Other than this Adams email in 493 and
 6 emailing yourself files, did you ever conduct Long
 7 Leaf Trading business communications through your
 8 Gmail address?
 9 A No, I did not transact business through
 10 my Gmail address.
 11 Q I think I'm asking a slightly different
 12 question rather than -- and I apologize if I asked
 13 it imprecisely. I'm not asking if you conducted
 14 business through your Gmail address. I'm asking
 15 if you used your Gmail email account for any
 16 communications related to Long Leaf Trading at any
 17 time other than this Brian Adams email exchange
 18 or emailing yourself documents so you could work
 19 on them at home.
 20 A I don't remember ever using it, but I could
 21 have done it by accident.
 22 Q Okay. Well, we may come back to
 23 that shortly. And so the subject line of this --
 24 of CFTC Exhibit 493 is Termination from Long Leaf.

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1 Do you remember, was Adams terminated around the
 2 time this email was sent, June of 2018?
 3 A Yes.
 4 Q Why did you fire Brian Adams?
 5 A We did not have the money to pay his
 6 salary and he was not in a sales position, so I had
 7 no -- I had to take on all those roles myself.
 8 Q Other than not having the money to
 9 pay his salary, were there any other factors that
 10 contributed to your decision to fire Brian Adams?
 11 A No.
 12 Q So down on Adams' email to you he
 13 writes -- the third paragraph so you can follow
 14 along -- Adams writes, "I don't appreciate the
 15 uncomfortable position this has put me in regarding
 16 unknown potential personal liability associated with
 17 having my name tagged to high-level positions within
 18 Long Leaf that frankly didn't exist," and I think
 19 he's referring to principal and chief compliance
 20 officer. Did I read that correctly?
 21 A He is a principal. I don't believe he
 22 was ever tagged as the chief compliance officer.
 23 Q So whether or not he was, in fact, the
 24 chief compliance officer, do you agree that he's

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1 telling you that he's uncomfortable being associated
2 with those two positions, principal and chief
3 compliance officer?

4 A Yes, that's what it says.

5 Q And then we're just going to
6 scroll up to your response here. You write,
7 "Brian, I understand your concerns and agree with
8 your assessment. My first instinct is to have an
9 outline of what duties you were responsible for and
10 what you were not. My list of what compliance tasks
11 you had responsibility for are as follows:" And
12 then you have an itemized list of five items for
13 Adams and then you describe things that you were
14 responsible for. Do you see that?

15 A Correct.

16 Q So in your email to Adams in June
17 of 2018 you write that you're responsible for --
18 and I'm assuming this is a non-exhaustive list --
19 financial filings, overseeing the sales organization
20 and assuring that non-scripted information meets
21 NFA rules, trade activities, all other compliance
22 activities. Did I -- is that the list that you
23 wrote to Adams about your responsibilities?

24 A Yes, it is.

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1 Q What do you think you meant by overseeing
2 the sales organization there?

3 A This had to do with compliance,
4 not the actual sales organization itself.
5 The day-to-day responsibilities were Scott Gecas'.
6 However, there's still our compliance that we go
7 through to make sure that rules are being followed.

8 Q And that oversight of the sales
9 organization, whether from a compliance perspective
10 or a business perspective, that was something you
11 were responsible for, right?

12 A At that time, yes.

13 Q And compliance, does that mean that
14 making sure that your APs did not disseminate
15 misleading communications to prospective customers?
16 Was that one of the compliance activities involved
17 with overseeing the sales organization?

18 A Yes.

19 Q What is non-scripted information? What
20 do you mean by that?

21 A If somebody is saying something outside
22 of any script or any talking points, that it meets
23 the rules or if they send out a document or they
24 send out something to a customer or a prospective

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1 customer, that they -- you know, for example, review
2 of emails is what I would consider non-scripted
3 information.

4 Q Okay, that's helpful. And what about
5 listening to recorded phone calls?

6 A That was primarily roles of Scott and
7 Brian.

8 Q Right, but you list it as a thing that
9 you are responsible for.

10 A I don't see the document anymore. I don't
11 see it as being listed on there.

12 Q Sure, and let me break it down because
13 I skipped an inferential step there. You write
14 among the four things that you're responsible for,
15 Item 2, overseeing sales organization and assuring
16 that non-scripted information meets NFA rules.
17 And I'm focused on that second half, assuring that
18 non-scripted information meets NFA rules. I think
19 you said that that means that you were responsible
20 for ensuring that anything that wasn't on the
21 scripts met NFA rules, is that a fair summary?

22 A That's a fair summary.

23 Q And one way you said that you did that
24 was by reviewing emails because email communications

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1 were not scripted, right?

2 A Correct.

3 Q And brokers also communicated to customers
4 on phone calls, right?

5 A Correct.

6 Q So what steps did you take to
7 ensure that during telephonic solicitations
8 the non-scripted information used by brokers met
9 NFA rules?

10 A That's where I used Brian and Scott
11 to do that review and bring up any information
12 that they heard.

13 Q So you weren't reviewing recorded
14 telephone calls during this pre-June 2018 time
15 period?

16 A No, I was not.

17 MR. PLATT: And let's change gears a
18 little bit here. I'm going to share a document
19 that I'm going to mark as CFTC Exhibit 494.
20 (Whereupon CFTC Exhibit No. 494
21 was marked for identification.)

22 Q Do you recognize CFTC Exhibit 494
23 as the May 21, 2019 4g request directed to Long
24 Leaf Trading?

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1 A Yes.

2 Q What did you do to respond to this 4g

3 request?

4 A I pulled all the documents related

5 to each and every item from either, you know, AWS

6 storage or backups on our computers or physical

7 paper documents.

8 Q And those included emails and chats, right?

9 A Correct.

10 Q Telephone recordings, right?

11 A Correct.

12 Q Trading records and other documents related

13 to the trading program, right?

14 A Correct.

15 Q Did you perform the collection of

16 information for purposes of responding to this 4g

17 request or did you delegate that to someone?

18 A I did most -- I did the electronic,

19 pulled things that were electronically stored.

20 My wife helped me with all the paper collection

21 and making sure we had everything.

22 Q What documents did Long Leaf store in

23 hardcopy?

24 A All the trading, the stamped trading

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1 data was -- or the trade tickets. That's the

2 word I was looking for. A lot of the applications,

3 the older applications were still in paper format.

4 Those were the two biggest parts of it. There

5 were other things that were stored in hardcopy,

6 but it wasn't like a whole group of things.

7 Q Were any of Long Leaf's scripts stored

8 in hardcopy?

9 A They were only -- I mean, yes, they were

10 stored in hardcopy.

11 Q In responding to the CFTC's May 21,

12 2019 4g request did you search for, collect and

13 produce all responsive Long Leaf scripts that had

14 been stored in hardcopy?

15 A Honestly, I don't know. There was a lot

16 of documents. We tried to do an exhaustive search

17 of everything.

18 Q Sitting here today, do you remember

19 making a decision not to produce scripts that had

20 been stored in hardcopy to the CFTC in response to

21 the 4g request?

22 A No, I never made any conscious decision

23 to exclude any information.

24 Q Were hardcopy scripts excluded from

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1 the Long Leaf response to the CFTC's May 21, 2019

2 4g request?

3 A They may have been. I don't know.

4 Q Who would know?

5 A You guys would know if they weren't there

6 or not. I --

7 Q So your testimony is that Long Leaf

8 Trading may or may not have excluded or failed to

9 produce scripts of solicitation materials that were

10 stored in hardcopy when responding to the CFTC's

11 May 21, 2019 4g request. Do I have that right?

12 A Could you repeat the question, please.

13 Q Mr. Donelson, is it your testimony

14 that you are not sure if Long Leaf Trading produced

15 hardcopy scripts and other hardcopy solicitation

16 materials in response to the May 21, 2019 CFTC 4g

17 request?

18 A Yes.

19 Q It seems like kind of an important

20 set of documents to me in this case. Do you think

21 the scripts are important documents?

22 A Yes.

23 Q And you don't know if you produced them

24 or not?

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1 A There were a ton of documents. It

2 took us weeks to pull all that data together, and

3 we reserved the right when we filed it to supplement

4 because we were still searching boxes and things

5 like that of data.

6 Q Where were the hardcopy scripts stored

7 at Long Leaf Trading? Was there a filing cabinet?

8 Was there like a little binder? Where were they

9 kept?

10 A I honestly don't remember.

11 Q But you know they existed, right, hardcopy

12 scripts of solicitation materials?

13 A Yes, I knew they existed at the time.

14 I thought they were part of what we submitted.

15 MR. PLATT: I'm going to mark as CFTC

16 Exhibit 495 the CFTC's August 21, 2020 first

17 set of requests for production to Long Leaf

18 Trading in connection with this litigation.

19 (Whereupon CFTC Exhibit No. 495

20 was marked for identification.)

21 Q You've seen this document before, right,

22 Mr. Donelson?

23 A Correct.

24 Q And what did you do to respond to this

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1 set of requests for production?
 2 A Could you scroll down to make sure I'm
 3 clear? This is the extension of the 4g request
 4 to the end of the period, is that correct?
 5 Q Yeah.
 6 A Same types of information. Electronic,
 7 obviously most of this was now electronic. The
 8 trades tickets were still in paper format, but we
 9 were scanning them and just making sure we had all
 10 the documents and also making sure that they got
 11 moved from the old location to the new location.
 12 Q So we'll come back to the request
 13 for production in a minute. Earlier you talked
 14 about a CRM system. What does CRM stand for?
 15 A Customer relationship management.
 16 Q How did Long Leaf use its CRMs?
 17 A It would store all of its leads,
 18 customers, everything in the system. It would
 19 use that as the basis to make phone calls, as the
 20 basis of, you know, storing customer -- what's the
 21 word, not their demographic data but their phone
 22 numbers, their email addresses, everything. It
 23 would actually allow you to say is this a customer,
 24 is this a prospective customer. It's basically

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1 a way to manage or to -- it's a database all of
 2 the possible customers.
 3 Q The CRM is the mechanism by which
 4 Long Leaf would record telephone calls, right?
 5 A Correct.
 6 Q Whose telephone calls did Long Leaf
 7 Trading's CRM system record?
 8 A It would record anybody who was calling
 9 through their call manager.
 10 Q So is it your testimony that everyone
 11 at Long Leaf had their own line recorded?
 12 A No, it would only be if they were
 13 calling through the CRM. For example, I didn't
 14 call through the CRM. Brian Adams didn't call
 15 through the CRM. None of those called through
 16 the CRM so the recording would not happen or if
 17 somebody called you, that would also not get
 18 recorded.
 19 Q Does the CRM, was it connected to every
 20 broker's desk phone or was it a separate device?
 21 A No, it's connected to their phone.
 22 Q What was the purpose of recording telephone
 23 calls at Long Leaf Trading?
 24 A So that you had an accurate record of what

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1 the conversation was.
 2 Q For what purpose?
 3 A For compliance purposes, for training
 4 purposes.
 5 Q You testified that you listened to
 6 recorded phone calls as part of your supervision
 7 of Long Leaf brokers, right?
 8 A Correct.
 9 Q I think you testified you listened to
 10 a lot of calls, right?
 11 A I wouldn't say a lot of calls.
 12 Q Can you put a number on it? Like
 13 how many calls did you listen to per week or
 14 per month?
 15 A Probably five or six a month.
 16 Q Okay. Based on your review of recorded
 17 phone calls and the fact that I think yesterday
 18 you testified that you sat in close quarters with
 19 the Long Leaf brokers on the sales floor, do you
 20 think you had a pretty good understanding of the
 21 content of Long Leaf Trading's brokers' verbal
 22 solicitations during the time period you owned
 23 the company?
 24 A Yes.

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1 Q Did Long Leaf brokers ever make business
 2 calls from their personal cell phones?
 3 A Not that I know of. They were not
 4 supposed to.
 5 Q Did you direct them to only make
 6 solicitation calls through the CRM?
 7 A Yes.
 8 Q Did Long Leaf brokers ever disable
 9 the CRM's recording functionality or otherwise
 10 seek to circumvent its recordation of their phone
 11 calls?
 12 A They could not disable it on their
 13 phone. Did they try to circumvent it? I have no
 14 instance of that, but could they have, yes.
 15 Q What about during the Evans era,
 16 do you know if brokers did that during the Evans
 17 era? Do you know if brokers tried to circumvent
 18 the recordation of their telephone calls during
 19 the Evans era?
 20 A I don't know.
 21 Q Do you know if brokers used their
 22 cell phones to make solicitation calls or talk to
 23 customers during the Evans era?
 24 A I don't know.

<p style="text-align: right;">Page 81</p> <p>1 Q And there came a time when Long Leaf 2 switched CRM vendors, right? 3 A Correct. 4 Q Do you remember approximately when that 5 occurred? 6 A January of 2019. I think that's when we 7 started implementing that. 8 Q And so for the new vendor, was 9 it a similar policy whereby only outgoing phone 10 calls from the -- through the CRM system would be 11 recorded? 12 A It was supposed to record incoming also. 13 Q Did it record incoming? 14 A I think so but I don't -- I'm not sure 15 about that. 16 Q Why didn't you hook your phone up through 17 the CRM? 18 A I was not soliciting customers. 19 Q You never solicited any customers 20 during the -- you never spoke to any prospective 21 customer before they opened an account? 22 A I did speak to prospective customers 23 but usually very rarely. I would speak to existing 24 customers.</p>	<p style="text-align: right;">Page 83</p> <p>1 A Yes. 2 Q Your phone calls with the existing 3 customers, did they sometimes deal with the goals 4 of the trading strategy on a going-forward basis? 5 A I don't remember. 6 Q Did you ever talk to an existing 7 customer about your vision for the way the Long 8 Leaf Trading strategy would evolve? 9 A I don't remember. 10 Q Long Leaf used emails regularly in the 11 course of business, right? 12 A Correct. 13 Q Including to communicate with both 14 prospects and customers, right? 15 A Correct. 16 Q Long Leaf received information from 17 its clearing firms by email, right? 18 A Correct. 19 Q Long Leaf used emails to solicit 20 prospective customers, right? 21 A Correct. 22 Q What was Long Leaf's document 23 retention policy for emails and other electronic 24 communications?</p>
<p style="text-align: right;">Page 82</p> <p>1 Q When a Long Leaf broker spoke to an 2 existing customer, their line would be recorded as 3 they made that call through the CRM system, right? 4 A Correct. 5 Q So were you trying to avoid having your 6 line recorded, Mr. Donelson? 7 A No. 8 Q Did it cost more to have an additional 9 recorded line or an additional account with the CRM? 10 A Yes. 11 Q Is that why your line was not recorded? 12 A One reason, yes. 13 Q Any other reasons? 14 A I had a lot of other phone calls 15 that had nothing to do with the customers that -- 16 that was primarily calls I was making on a daily 17 basis. The CRM is where all the solicitation came 18 from. 19 Q So your phone calls with existing 20 customers, did those deal with the trading program? 21 A Sometimes yes, sometimes no. 22 Q Your phone calls with existing 23 customers, did they deal with the results of the 24 trading program?</p>	<p style="text-align: right;">Page 84</p> <p>1 A We -- all the emails were sorted and 2 archived through GoDaddy, and they would archive 3 all the documents in there from the point -- yeah. 4 Q When did that archiving process begin? 5 A I don't have an exact date, but in 2016 6 when they switched to GoDaddy. 7 Q Got it. Thank you. Do you know if any 8 Long Leaf employees deleted emails that they used 9 for business purposes? 10 A They possibly deleted them, but the archive 11 would still have them. 12 Q Can you explain how that works? 13 A I'm not a tech person but I know how -- 14 so every email that goes into the -- the archive 15 is a -- let me take a step back. I'll try to give 16 you the layman version of what I understand it to 17 do is that for every email that goes in or out it 18 adds it to the archives. The fact that you delete 19 it from your local mailbox doesn't change the 20 archive. The archive's a once -- write-once only. 21 Q I understand. That's helpful. And 22 when Long Leaf produced documents in response 23 to the requests for production and 4g request, did 24 Long Leaf collect its emails from the archive or</p>

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1 from the local --
 2 A They came from the archive.
 3 Q Understood. Did Long Leaf have an internal
 4 chat functionality?
 5 A Yes.
 6 Q What was the document retention policy
 7 with regard to the internal chats?
 8 A The internal chats would actually go
 9 to the email archive also.
 10 Q Okay. Do you know if Long Leaf Trading
 11 produced chats to the CFTC in response to the 4g
 12 request and the requests for production?
 13 A No. Can you say that again because I'm
 14 not sure I answered it correctly.
 15 Q Did Long -- let me ask it slightly
 16 differently. Did Long Leaf Trading produce chats,
 17 as opposed to emails, in response to the CFTC's
 18 4g request and requests for production in the
 19 litigation?
 20 A Yes, they would be in the email archives,
 21 from my understanding.
 22 Q Did Long Leaf use like a shared drive
 23 or a network drive in the course of its business?
 24 A We used OneDrive and you could then

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1 share it. We didn't use -- during my period we
 2 did not use it very much. I just didn't find it
 3 overly effective. I was spending more time trying
 4 to make sure everybody could get into it than
 5 actually was worth it.
 6 Q What is OneDrive?
 7 A It is a Microsoft product that
 8 stores -- backs up all your data, but you can
 9 also share files across it. You can work on it.
 10 It stores on your computer, but then it also updates
 11 the stored drive.
 12 Q So let me just show you an exhibit.
 13 I'm going to mark this, Mr. Donelson, as CFTC
 14 Exhibit 496.
 15 (Whereupon CFTC Exhibit No. 496
 16 was marked for identification.)
 17 Q Do you see this? This is an email from
 18 Brian Adams to you on May 21, 2018.
 19 A Yeah.
 20 Q And he's sharing a document and
 21 down at the bottom you can see it says Microsoft
 22 OneDrive. Is this an example --
 23 A Yes.
 24 Q -- of the way that Long Leaf would

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1 use the OneDrive to store and share documents?
 2 A Yes.
 3 Q I'm going to scroll down. This is
 4 actually a group exhibit, but there's one other
 5 email. This is from you to Adams on March 14, 2018.
 6 This is still on Exhibit 496. The subject is Jim
 7 Donelson shared the folder "Compliance" with you.
 8 And this is also -- do you see that it's Microsoft
 9 OneDrive?
 10 A Yes.
 11 Q Is this another example of the way
 12 Long Leaf used OneDrive to store and share like
 13 folders of documents and information?
 14 A Yes.
 15 Q Other than OneDrive, did Long
 16 Leaf have any other centralized repositories for
 17 electronically stored information such as a local
 18 network drive or a local shared drive?
 19 A We did not have either of those. We didn't
 20 have our own server.
 21 Q Did you have anything that functioned --
 22 do you know like what a local drive is or what a
 23 shared drive is generally?
 24 A Yes, yes, I do.

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1 Q Did Long Leaf -- is it right that Long
 2 Leaf did not use one of those other than to the
 3 extent that you used Microsoft OneDrive?
 4 A Correct.
 5 Q Did you maintain electronically stored
 6 information in a local folder on your computer at
 7 Long Leaf?
 8 A There was local -- yeah, there was
 9 information on my local computer, yes.
 10 Q What information did you store on your
 11 computer at Long Leaf?
 12 A The only things I remember are payroll
 13 information, company opening documents and things
 14 like that related to actually administration of the
 15 company. Those are the only things I would not put
 16 into a OneDrive.
 17 Q What about during the Evans era, what
 18 was the setup for electronically stored information
 19 during the Evans era? Did they use a shared drive?
 20 A I really don't know.
 21 Q Okay. And so for OneDrive I see this
 22 compliance folder that I showed you on Exhibit 496.
 23 We see, you know, Adams sent you what looked like
 24 a script document. What kinds of information did

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1 Long Leaf store on OneDrive?
 2 A Basically all of our information was
 3 stored on OneDrive, which was --
 4 Q Information related to the trading
 5 program -- I'm sorry. I think we spoke over each
 6 other. Let me just ask the question. Did Long Leaf
 7 Trading store information related to the trading
 8 program on OneDrive?
 9 A Yes.
 10 Q Did Long Leaf Trading -- strike that.
 11 In responding to the CFTC's 4g request and requests
 12 for production, both of them, did Long Leaf Trading
 13 collect documents from -- that had been stored in
 14 OneDrive?
 15 A Yes.
 16 Q Were there any documents that had
 17 been stored in OneDrive that were excluded from
 18 Long Leaf Trading's search for responsive documents
 19 concerning the 4g request or the requests for
 20 production?
 21 A Only documents related to attorney-client
 22 privilege.
 23 Q So just to sum it up, and this is
 24 going to be in laymen's terms, to respond to the

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1 4g request and the RFPs Long Leaf Trading went
 2 into the OneDrive and got pretty much everything
 3 and produced it that was responsive?
 4 A Yes.
 5 Q Okay, thank you. That's helpful.
 6 Was OneDrive in existence when Long Leaf Trading
 7 changed ownership or is that something you
 8 implemented?
 9 A No, it was in existence when I purchased
 10 the firm.
 11 Q And you sort of maintained the existing
 12 foldering structure or did you change the foldering
 13 structure?
 14 A I changed the foldering structure.
 15 Q Did you ever look in the OneDrive
 16 to determine if there was any information related
 17 to the performance of the trading system from
 18 the Evans era?
 19 A Yes.
 20 Q Did you find any information on the
 21 OneDrive related to the trading performance of the
 22 trading system under the Evans era?
 23 A The only thing I saw was maybe
 24 an individual trade or -- but nothing overall

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1 performance.
 2 Q Yesterday you testified that pretty
 3 early on in your ownership you learned that the
 4 trading results from the Evans era in connection
 5 with the Time Means Money program had been poor.
 6 Do you remember that?
 7 A Yes.
 8 Q How did you learn that?
 9 A There were -- a few brokers told me,
 10 hey, the performance in October was bad. It was
 11 bad in November. So I downloaded all the data out
 12 of Gain's clearing system. You can bring it down.
 13 That was a database to analyze that, yeah, this is
 14 like four or five months in a row that they lost
 15 money and what they were losing money on, but that
 16 was basically for a five- to six-month period.
 17 Q Which brokers told you that the trading
 18 had been poor when you first owned the company?
 19 A Well, the ones that had been there.
 20 Scott Gecas had told me, Andrew Nelson had told
 21 me, I think James Hatzigiannis kind of confirmed it,
 22 that like October was a really bad month.
 23 Q So I'd like to summarize the process
 24 by which you searched for and collected information

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1 for Long Leaf's response to the CFTC's 4g request
 2 and requests for production. You got -- you pulled
 3 emails from the Long Leaf Trading email archive,
 4 right?
 5 A Correct.
 6 Q Did you exclude any emails based
 7 on responsiveness or did you sort of pull the
 8 archive emails and transmit that electronically
 9 stored information?
 10 A The only things were things related to
 11 attorney-client privilege.
 12 Q I understand. And the same with chats?
 13 A Yes.
 14 Q How about phone recordings, were any
 15 phone recordings excluded from the productions?
 16 A No.
 17 Q And you did not exclude any material from
 18 the Microsoft OneDrive system when you responded
 19 to the 4g request or the RFPs other than what may
 20 have been protected by attorney-client privilege,
 21 is that right?
 22 A Correct.
 23 Q Did Long Leaf Trading maintain its
 24 access to the OneDrive system after it stopped

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1 business operations in December 2019?
 2 A Yes.
 3 Q So that there was no loss of data
 4 information or information between the time when
 5 Long Leaf stopped operating and when it responded
 6 to the CFTC's requests for production in August
 7 of 2020?
 8 A That is correct.
 9 Q Did you ever search your Gmails for
 10 any responsive communications to respond to the
 11 4g request or the CFTC's requests for production?
 12 A Yes.
 13 Q You did search your Gmails?
 14 A Just to make sure.
 15 Q Did you produce any Gmails to the CFTC?
 16 A I don't think so.
 17 Q Did you identify any responsive --
 18 any responsive information in your Gmail account?
 19 A Mostly attorney-client privileged
 20 information.
 21 Q What about nonattorney-client privileged
 22 information?
 23 A I didn't see any. However, I don't
 24 have an archive on my Gmail system so I'm looking

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1 at what my actual email system has right now, or
 2 at the time when you asked the question.
 3 Q And so do your Gmails roll off, like
 4 stored? Like what's -- is there data loss there?
 5 Describe that to me.
 6 A I don't know what the archiving --
 7 or the time frame I have set. I think it's a year
 8 or so.
 9 Q Okay. So --
 10 A Or if I particularly save it.
 11 Q So it's possible based on your Gmail data
 12 retention setting that --
 13 A I could have missed something, yes.
 14 Q -- responsive information may not have
 15 been retained?
 16 A Correct.
 17 Q Okay, that's helpful too. So that's
 18 all, thankfully, for the 4g and the RFPs.
 19 MR. PLATT: Do you guys want to break
 20 for a quick lunch now or do you want to keep
 21 going and take lunch later? I'm about halfway
 22 done.
 23 MR. FALVEY: Let's do it now then.
 24 THE WITNESS: Let's just keep pushing

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1 forward.
 2 MR. FALVEY: Oh, I need to go pee.
 3 THE WITNESS: Okay. So let's just break
 4 for lunch then.
 5 MR. FALVEY: Or I can do it in three
 6 minutes and then we can keep going for a
 7 little bit, if you want.
 8 THE WITNESS: I'd rather just take
 9 a 30-minute break. Is that enough time for
 10 lunch?
 11 MR. PLATT: Yes. Let's come back at
 12 like 12:20 because I've got to run out to --
 13 MR. FALVEY: Okay.
 14 MR. PLATT: Let's go off the record.
 15 (Whereupon a lunch recess was taken
 16 from 11:43 a.m., to 12:25 p.m., after
 17 which the following proceedings were
 18 had:)
 19
 20
 21
 22
 23
 24

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1 AFTERNOON SESSION
 2 JAMES DONELSON,
 3 called as a witness herein, having been previously
 4 sworn and examined, testified further as follows:
 5 DIRECT EXAMINATION (Cont'd.)
 6 BY MR. PLATT:
 7 Q Mr. Donelson, earlier this morning
 8 I asked you a series of questions concerning the
 9 sources of Long Leaf Trading's revenue. Do you
 10 remember those questions?
 11 A Yes.
 12 Q I just want to return to that topic
 13 briefly to make sure I understand the answers.
 14 So for the period of time when you owned Long
 15 Leaf and you continued -- and Long Leaf continued
 16 to receive revenue associated with the CFD dealer,
 17 so that was December 2017 through approximately
 18 February 2018, is that right?
 19 A That is correct.
 20 Q Did the revenue associated with the CFD
 21 dealer, did that come from Gain?
 22 A No, it came from CMC Markets in London.
 23 Q Perfect, that's helpful. And
 24 of the bucket of money that came to Long Leaf

<p style="text-align: right;">Page 97</p> <p>1 Trading from Gain between December 2017 and</p> <p>2 February 2018, do I have it correct that your</p> <p>3 testimony was approximately 90 percent of that</p> <p>4 revenue was associated with trading program</p> <p>5 participants?</p> <p>6 A A better way to look at it is Gain</p> <p>7 through August of 2018, that was about 90 percent</p> <p>8 from the trading -- the trading program and about</p> <p>9 10 percent from self-traders. Any payments past</p> <p>10 that point from Gain are only self-traders and</p> <p>11 any payment from Cunningham is for the program.</p> <p>12 Q And is the answer the same for the</p> <p>13 Evans period, would the revenue associated with</p> <p>14 the CFD dealer have come from CMC Markets and not</p> <p>15 from Gain?</p> <p>16 A Correct.</p> <p>17 Q Thank you. Now I'd like to please --</p> <p>18 do you still have access to CFTC Exhibit 450?</p> <p>19 It's an Excel file.</p> <p>20 A Yes.</p> <p>21 Q Let me pull that up on your side and</p> <p>22 we'll look at it together, if possible, please.</p> <p>23 A Okay.</p> <p>24 Q This is a document, Mr. Donelson,</p>	<p style="text-align: right;">Page 99</p> <p>1 multiple pieces.</p> <p>2 Q To identify the information that's</p> <p>3 in Column A of the Full List tab, that's account</p> <p>4 name. Did you --</p> <p>5 A That's the account --</p> <p>6 Q You obtained those -- that information</p> <p>7 from the statements that Long Leaf received from</p> <p>8 either Gain or Cunningham over the years, is that</p> <p>9 right?</p> <p>10 A Correct.</p> <p>11 Q And then Sheet 1, what's going on in</p> <p>12 Sheet 1?</p> <p>13 A I'm doing some type of analysis. It's</p> <p>14 not pertinent.</p> <p>15 Q The TMM Customers tab of Exhibit 450 has</p> <p>16 195 accounts listed. What does this tab reflect?</p> <p>17 A It would be anyone who was in</p> <p>18 a broker-assisted program during the relevant</p> <p>19 time period.</p> <p>20 Q And by broker assisted do you</p> <p>21 mean the program whereby Long Leaf Trading would</p> <p>22 recommend options trades to customers and then the</p> <p>23 customer would either opt in or decline to trade?</p> <p>24 A Correct.</p>
<p style="text-align: right;">Page 98</p> <p>1 that you created for the purpose of responding to</p> <p>2 our request for production, right?</p> <p>3 A Correct.</p> <p>4 Q And do I understand this document</p> <p>5 correctly that it's any account, any Long Leaf</p> <p>6 account that was open for any portion of the</p> <p>7 relevant period as it's described in the complaint?</p> <p>8 A Correct.</p> <p>9 Q And there are four tabs. The tabs are</p> <p>10 Full List, Sheet 1, TMM Customers and Opened After</p> <p>11 Ownership?</p> <p>12 A Yes.</p> <p>13 Q What does the Full List represent?</p> <p>14 A That is a complete list of all</p> <p>15 customers that had accounts open at any time</p> <p>16 during the complaint.</p> <p>17 Q And where did you obtain the</p> <p>18 information that's in the Full List tab of</p> <p>19 Exhibit 450?</p> <p>20 A The actual list of customers comes</p> <p>21 out of downloading the Gain statements for those</p> <p>22 periods that would tell me who is open, who's not,</p> <p>23 the client numbers. The emails and that I think</p> <p>24 come from another source, but it's pulling together</p>	<p style="text-align: right;">Page 100</p> <p>1 Q Is there another kind of broker-assisted</p> <p>2 trading program at Long Leaf?</p> <p>3 A No.</p> <p>4 Q Okay. And how did you determine which</p> <p>5 accounts to include on the TMM tab? How did you</p> <p>6 determine which accounts were in the broker-assisted</p> <p>7 trading program at Long Leaf -- trading program at</p> <p>8 Long Leaf?</p> <p>9 A Two things. One would be who was</p> <p>10 the broker who opened the account. And in the</p> <p>11 case of any accounts of Tim Evans, I would look at</p> <p>12 what the actual trades were and are they consistent</p> <p>13 with other people who are in -- that have been</p> <p>14 determined to be in the program.</p> <p>15 Q Bear with me so I summarize</p> <p>16 your testimony accurately. Your first step in</p> <p>17 determining which accounts to include on the TMM</p> <p>18 Customers tab was to look at the broker associated</p> <p>19 with the account. Is it correct that any account</p> <p>20 that was not associated with Tim Evans as the broker</p> <p>21 was included?</p> <p>22 A That is not correct because of two</p> <p>23 accounts that Craig Pace opened that were from</p> <p>24 a previous -- they were self-trading.</p>

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1 Q Got it. So all non-Evans broker
 2 accounts and not the two Craig Pace self-directed
 3 accounts was your first step, right?
 4 A Correct.
 5 Q Then among the Evans accounts,
 6 you went to the trading statements, the customer
 7 statements and looked at the trading activity to
 8 see if it was consistent with the Time Means Money
 9 trade recommendations, right?
 10 A Correct.
 11 Q And then on the Opened After Ownership
 12 tab, those are all the accounts that were opened
 13 after you purchased the company in December 2017,
 14 is that right?
 15 A Correct.
 16 Q Do I have it correct that all the
 17 Long Leaf customers who opened accounts after
 18 you bought the company participated in the trading
 19 program?
 20 A Correct.
 21 Q If you look at the TMM Customers
 22 tab, and there are 195 customer accounts listed
 23 on that tab, if you wanted to identify the lifetime
 24 PNL associated with any of the accounts, how would

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1 you do that?
 2 A How did I do it or how would I do it?
 3 Q Did you do it, first of all?
 4 A Well, you take the initial funding
 5 and then you would take the closing balance when
 6 they either left or when they ceased to be customers
 7 of Long Leaf.
 8 Q Did you ever undertake to -- undertake
 9 that analysis for the Time Means Money customers?
 10 A I did.
 11 Q When did you do that?
 12 A I don't remember when I did it.
 13 Q Did you attempt to determine the
 14 lifetime PNL for the Time Means Money customers
 15 while Long Leaf Trading was in operations or after
 16 it ceased to operate?
 17 A It was while it was in operations.
 18 Q Do you think it was in 2019 or 2018?
 19 A For customers that were in --
 20 were live customers in 20 -- when I acquired
 21 the firm, I created a database that I shared with
 22 CFTC of getting to their lifetime where they're
 23 making money, what trades are making money, so
 24 we're tracking it in there. When we went from

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1 Gain to Cunningham, we created a different report
 2 to track that so sometimes you have to put the two
 3 together. But going back to all the customers
 4 before, I don't know -- remember when I did that.
 5 Q Did you ever --
 6 A I remember doing it but it wasn't --
 7 I don't remember when.
 8 Q Did you ever generate a document
 9 that reflected the results of your analysis of
 10 customer lifetime net PNL?
 11 A Yes.
 12 Q Where is that document?
 13 A Specific customers' PNL, yes.
 14 Q And which ones?
 15 A There were quite a few that we would
 16 do the report, put the whole report together for
 17 upon their request or in some cases kind of on
 18 a monthly basis. But they're in the documents
 19 sent to -- you know, some names I know, Drayer,
 20 Reeves. I don't know each and every -- I can't
 21 remember each and every one that I produced one
 22 for.
 23 Q The analyses you're referencing right
 24 now, they would be created for customers to show

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1 their accounts sort of on a realtime basis,
 2 is that right? I think I know what you're talking
 3 about, but I'm asking a slightly different question.
 4 I'm asking did you ever conduct a lookback analysis
 5 of all the Time Means Money customers to determine
 6 their lifetime net PNL?
 7 A Yes, I did, but I don't remember when.
 8 Q All right. Did you retain -- did you
 9 create any documents that reflected that analysis?
 10 A I don't remember, honestly.
 11 Q You don't remember why you did it?
 12 A No, I don't remember where --
 13 it should have been retained on the OneDrive.
 14 Where exactly, I -- I'm sorry? We can't hear
 15 you.
 16 MR. FALVEY: No, we can't hear.
 17 MR. PLATT: Let's go back on the record,
 18 please.
 19 Q So, Mr. Donelson, before my audio
 20 cut out, unfortunately, I was asking you about
 21 reports or analyses you created reflecting Long
 22 Leaf Trading trading program participants' lifetime
 23 net PNL, and I asked you did you create any
 24 documents that reflected that analysis.

<p style="text-align: right;">Page 105</p> <p>1 A There was an Excel spreadsheet that</p> <p>2 I created. I don't remember the name of it and</p> <p>3 I don't remember when I did it.</p> <p>4 Q Was that file produced to the CFTC at</p> <p>5 any time?</p> <p>6 A I believe it was.</p> <p>7 Q Do you remember why you created</p> <p>8 the document with the analysis of the customers'</p> <p>9 lifetime net PNL?</p> <p>10 A To understand the history.</p> <p>11 Q Do you remember if you did it in 2018</p> <p>12 or 2019?</p> <p>13 A Sometime in 2018.</p> <p>14 Q This document that you're referencing</p> <p>15 was a single Excel file?</p> <p>16 A From what I remember, yes.</p> <p>17 Q Did you email it to anyone?</p> <p>18 A No.</p> <p>19 Q What did it show?</p> <p>20 A Losses on accounts, when they had pulled</p> <p>21 out the money. It was a high-level analysis of how</p> <p>22 much money was lost, how much money, period.</p> <p>23 Q Do you remember what part of 2018</p> <p>24 it was when you created this analysis? Was it</p>	<p style="text-align: right;">Page 107</p> <p>1 A Yeah, it was over a hundred. I know that.</p> <p>2 Q I'd like to just go back to</p> <p>3 Exhibit 450 quickly. I just have one more</p> <p>4 housekeeping question on it. On the TMM Customers</p> <p>5 tab, Mr. Donelson --</p> <p>6 A Um-hmm, yes.</p> <p>7 Q -- if you filter Column J, which is the</p> <p>8 broker column --</p> <p>9 A Um-hmm, yes.</p> <p>10 Q -- only for Tim Evans, you only get</p> <p>11 three accounts. Does that strike you as low?</p> <p>12 How did you determine which of the -- or, excuse me.</p> <p>13 Does that strike you as a low number?</p> <p>14 A No.</p> <p>15 Q What's your understanding of whether</p> <p>16 or not Mr. Evans was opening customer accounts when</p> <p>17 he owned the company?</p> <p>18 A My understanding was he was opening only</p> <p>19 self-trading accounts.</p> <p>20 Q What's the basis for that understanding?</p> <p>21 A That's what he told me and the data seems</p> <p>22 to support that.</p> <p>23 Q Did he tell you that during the due</p> <p>24 diligence process associated with the purchase</p>
<p style="text-align: right;">Page 106</p> <p>1 early on right after you bought the company?</p> <p>2 Was it after the significant losses in November and</p> <p>3 December of 2018? Can you ballpark it?</p> <p>4 A I don't remember.</p> <p>5 Q And it would have included -- do</p> <p>6 you remember if your analysis included all the</p> <p>7 customers, including those who opened accounts</p> <p>8 after you opened the company -- after you purchased</p> <p>9 the company?</p> <p>10 A It included all the customers to date.</p> <p>11 Q Do you recall if it showed any customer</p> <p>12 achieving lifetime net profitability?</p> <p>13 A I remember a couple, but I really don't</p> <p>14 remember the file that well.</p> <p>15 Q A couple, like less than five out of</p> <p>16 that total?</p> <p>17 A Correct.</p> <p>18 Q And the total would have been over</p> <p>19 a hundred, right?</p> <p>20 A A total of what?</p> <p>21 Q Total number of accounts that you</p> <p>22 included in your analysis of lifetime net PNL</p> <p>23 to track Time Means Money customers that you're</p> <p>24 discussing right now.</p>	<p style="text-align: right;">Page 108</p> <p>1 transaction of the company or after you had bought</p> <p>2 the company?</p> <p>3 A After.</p> <p>4 Q How did that conversation come up?</p> <p>5 A It was a conversation about the Gain</p> <p>6 statements and the assignment of the sales code</p> <p>7 because as I downloaded the data, you would notice</p> <p>8 multiple sales codes for the same customer and</p> <p>9 he had to walk me through that, that okay, this</p> <p>10 person may have opened it. They left the firm so</p> <p>11 it got assigned to somebody else, so they moved it</p> <p>12 to a new sales code. And then there was another</p> <p>13 sales code related to -- I don't remember what it</p> <p>14 was related to.</p> <p>15 Q Do you remember how many accounts</p> <p>16 were associated with Evans as the broker overall?</p> <p>17 A All of the self-trading accounts</p> <p>18 were associated with him except for the two</p> <p>19 I mentioned with Craig Pace, and there were two</p> <p>20 accounts where he had discretion on, maybe three.</p> <p>21 Q So circle back to your earlier testimony.</p> <p>22 If you wanted to identify the lifetime net PNL for</p> <p>23 any particular account, you would compare the amount</p> <p>24 that was deposited in the account by the customer</p>

<p style="text-align: right;">Page 109</p> <p>1 for the total amount --</p> <p>2 A Correct.</p> <p>3 Q -- with the ending balance at the time</p> <p>4 the account was closed, is that right?</p> <p>5 A Correct.</p> <p>6 Q And are those amounts both available on</p> <p>7 FCM statements?</p> <p>8 A Yes.</p> <p>9 Q Let's return to our discussion of Long</p> <p>10 Leaf's trading program. I think you testified that</p> <p>11 a characteristic of Long Leaf's trading program was</p> <p>12 that customers received recommendations and either</p> <p>13 accepted the recommendations and executed the trades</p> <p>14 or declined to execute it. Is that generally right?</p> <p>15 A That is correct.</p> <p>16 Q What products were a part of Long Leaf's</p> <p>17 trading program?</p> <p>18 A Bonds, currencies, ags and oil.</p> <p>19 Q Those are the underliers, right?</p> <p>20 And Long Leaf's trades were in options on those</p> <p>21 underliers, is that right?</p> <p>22 A That is correct.</p> <p>23 Q Can you explain at a high level the</p> <p>24 structure of Long Leaf's recommended trades?</p>	<p style="text-align: right;">Page 111</p> <p>1 Q So it sounds like there came a time</p> <p>2 where you went back and you looked at the trading</p> <p>3 records from Gain for the Evans era. Why did you</p> <p>4 do that?</p> <p>5 A One was to confirm that these were TMM</p> <p>6 customers or not by comparing it. The other was</p> <p>7 some of our current customers had started before</p> <p>8 I joined the firm. So to get an accurate report</p> <p>9 to them, I had to go back a period of time and</p> <p>10 just consistently those are what I saw. I didn't</p> <p>11 look at each and every trade.</p> <p>12 Q Did your trading recommendations include</p> <p>13 iron condors and iron butterflies?</p> <p>14 A Only for one month.</p> <p>15 Q What month was that, December 2017?</p> <p>16 A Correct.</p> <p>17 Q And then going forward those strategies</p> <p>18 were out of the Long Leaf rotation?</p> <p>19 A Correct.</p> <p>20 Q How were the Long Leaf trade</p> <p>21 recommendations disseminated to customers?</p> <p>22 A During my period or Mr. Evans' period?</p> <p>23 Q Let's start with your time period.</p> <p>24 A The first month we did use the</p>
<p style="text-align: right;">Page 110</p> <p>1 A It would be usually four options.</p> <p>2 It would be nondirectional, so you had calls</p> <p>3 and puts and sells, and it would also be two short</p> <p>4 positions, two long positions.</p> <p>5 Q And that was for the time period that</p> <p>6 you owned the firm, right?</p> <p>7 A Correct.</p> <p>8 Q What about the Evans era, what did</p> <p>9 the trading recommendations look like during the</p> <p>10 Evans era?</p> <p>11 A Very similar. However, they -- based</p> <p>12 on what I can glean from the trading records, they</p> <p>13 were predominantly credit spreads.</p> <p>14 Q You know what an iron condor is,</p> <p>15 Mr. Donelson, right?</p> <p>16 A Yes.</p> <p>17 Q Is it fair to say that the majority of</p> <p>18 Tim Evans' trade recommendations were iron condors?</p> <p>19 A The majority were either iron condors</p> <p>20 or iron butterflies is more accurate.</p> <p>21 Q Okay, that's helpful. Thank you. And how</p> <p>22 do you know that?</p> <p>23 A Based on the trading records from Gain</p> <p>24 Capital.</p>	<p style="text-align: right;">Page 112</p> <p>1 CRM system to do it. After that I would create</p> <p>2 an Excel, create a PDF and send it to the brokers</p> <p>3 to send to their customers.</p> <p>4 Q What about during the Evans era?</p> <p>5 A The only part I can talk about</p> <p>6 is what I saw with the CRM, sending it through</p> <p>7 the CRM. Before that I don't know.</p> <p>8 Q How far back did the Evans era</p> <p>9 use of the CRM system to disseminate the trading</p> <p>10 recommendations go, do you remember?</p> <p>11 A The start of 2017.</p> <p>12 Q And before that you're not sure how they</p> <p>13 were disseminated?</p> <p>14 A No.</p> <p>15 Q So you just described you created</p> <p>16 a document that would be sent out to customers</p> <p>17 during your ownership. I remember you and</p> <p>18 Mr. Burden discussed those documents to a great</p> <p>19 level of detail yesterday, and unfortunately I'd</p> <p>20 like to return to them briefly.</p> <p>21 Do you recall your testimony</p> <p>22 about the inclusion of data points, like max</p> <p>23 gain or target gain or max loss on the trading</p> <p>24 recommendations?</p>

<p style="text-align: right;">Page 113</p> <p>1 A Yes, I do.</p> <p>2 Q Do you agree generally that data</p> <p>3 like that in connection with an options trading</p> <p>4 strategy can be classified as a potential outcome?</p> <p>5 A I would deem it as a possible outcome,</p> <p>6 not potential.</p> <p>7 Q What's the difference between potential</p> <p>8 and possible? What's the distinction in your mind?</p> <p>9 A It's based on probability. So max gain,</p> <p>10 the probability of a max gain is actually very low</p> <p>11 based on just the probability analysis of the option</p> <p>12 itself.</p> <p>13 Q Okay. I don't disagree with you there.</p> <p>14 And on that topic do you agree that there's a range</p> <p>15 of probabilistic outcomes for an options trade?</p> <p>16 A Yes, I do.</p> <p>17 Q And there's a likelihood for any</p> <p>18 particular potential outcome or probable outcome</p> <p>19 that could mathematically be associated with each</p> <p>20 potential outcome or probable outcome?</p> <p>21 A Yes.</p> <p>22 Q Did you ever attempt to quantify</p> <p>23 the likelihoods of the possible outcomes that you</p> <p>24 had put in your trading recommendations?</p>	<p style="text-align: right;">Page 115</p> <p>1 disclosure of the likelihood of potential outcomes</p> <p>2 for each recommended options trade, is that correct?</p> <p>3 A That is correct.</p> <p>4 Q Do you think it's important to</p> <p>5 a customer in assessing whether or not to accept</p> <p>6 a recommended trade to know what the likelihood is</p> <p>7 of the potential outcomes that are listed on the</p> <p>8 recommendation?</p> <p>9 A I don't know.</p> <p>10 Q Is it important to you if you were</p> <p>11 going to execute an options trade for your own</p> <p>12 personal account to understand the likelihood of</p> <p>13 potential outcomes of an options trade?</p> <p>14 A Yes, it would be important to know the</p> <p>15 probability of making money on the trade but not</p> <p>16 (inaudible) a point estimate.</p> <p>17 Q Did the Long Leaf Trading trade</p> <p>18 recommendations include any probabilistic</p> <p>19 information that any particular trade would make</p> <p>20 money?</p> <p>21 A Yes.</p> <p>22 Q Describe where on Long Leaf's trading</p> <p>23 recommendations it disclosed to a customer the</p> <p>24 likelihood that a trade would make money.</p>
<p style="text-align: right;">Page 114</p> <p>1 A Yes, it's in the QuikStrike data.</p> <p>2 Q Did do you that as a matter of practice</p> <p>3 for every trading recommendation?</p> <p>4 A Not for every trading recommendation.</p> <p>5 Q Did you do it for the majority of your</p> <p>6 trading recommendations?</p> <p>7 A Yes.</p> <p>8 Q Why didn't you include the likelihood of</p> <p>9 the possible outcomes that you listed on the trading</p> <p>10 recommendations on the trading recommendations?</p> <p>11 A I don't know.</p> <p>12 Q Did Long Leaf Trading during the Evans</p> <p>13 era include the likelihood of the possible outcomes</p> <p>14 of each trade with their trading recommendations?</p> <p>15 A Not on the recommendations I saw.</p> <p>16 Q Are you aware of any trading</p> <p>17 recommendations from the Evans era that included</p> <p>18 probabilistic information concerning potential</p> <p>19 outcomes?</p> <p>20 A No on the ones I saw only. I can only</p> <p>21 speak to those.</p> <p>22 Q And other than the ones that you saw,</p> <p>23 you don't have any understanding of what Long Leaf's</p> <p>24 practices were during the Evans era concerning</p>	<p style="text-align: right;">Page 116</p> <p>1 A In 2019 when we sent a recommendation</p> <p>2 out, it shows what the expected point is -- what</p> <p>3 the expected profit or loss is going to be when the</p> <p>4 short option expires. It's not a probability number</p> <p>5 as you would say it, but it does show if we make</p> <p>6 this trade long and this trade short, all other</p> <p>7 things being equal, if the short expire worthless,</p> <p>8 this is -- that would be the remaining profit.</p> <p>9 Q So I think this is a really important</p> <p>10 followup question, Mr. Donelson. The information</p> <p>11 you just described in the answer you just gave does</p> <p>12 not tell a customer the likelihood that a particular</p> <p>13 trade would make money. Do you agree or disagree</p> <p>14 with that statement?</p> <p>15 A I agree.</p> <p>16 Q Were there any other -- was there any</p> <p>17 other information in a Long Leaf Trading trading</p> <p>18 recommendation that disclosed to a customer the</p> <p>19 likelihood that a trade would make or lose money?</p> <p>20 A Not in 2018.</p> <p>21 Q What about in 2019?</p> <p>22 A 2019 it shows the progression that</p> <p>23 says if I sell this, buy that, this is what the</p> <p>24 net's going to be at the end.</p>

<p style="text-align: right;">Page 117</p> <p>1 Q But you just testified that that's</p> <p>2 not information that shows the likelihood that</p> <p>3 a trade would make or lose money, right?</p> <p>4 A Correct.</p> <p>5 Q And for the Evans period, no information</p> <p>6 in the trading recommendations that would reflect</p> <p>7 whether or not a trade was likely to make or lose</p> <p>8 money, correct?</p> <p>9 A Not as far as I know.</p> <p>10 Q When you owned the company, I think</p> <p>11 you testified yesterday that in 2018 your employee</p> <p>12 Scott Gecas was responsible for designing the trades</p> <p>13 in 2018 and then in 2019 it was primarily your</p> <p>14 responsibility to design the trades, is that right?</p> <p>15 A That is correct.</p> <p>16 Q In 2018 did you and Gecas like talk shop?</p> <p>17 Did he talk about the trading recommendations?</p> <p>18 A Yes.</p> <p>19 Q That makes sense to me that he did</p> <p>20 that. I've seen a term in the Long Leaf documents</p> <p>21 that I've never been exposed to in my career in the</p> <p>22 financial markets called a volatility swap. Did you</p> <p>23 learn that term from Scott Gecas?</p> <p>24 A Yes, it's a trading term.</p>	<p style="text-align: right;">Page 119</p> <p>1 A Yes.</p> <p>2 Q And the first -- there are two trades</p> <p>3 listed on here. One is a Euro volatility swap and</p> <p>4 the second one is an oil broken wing butterfly,</p> <p>5 correct?</p> <p>6 A Correct.</p> <p>7 Q Can you -- excuse me. Does this</p> <p>8 reflect sort of the sale of a short-dated option</p> <p>9 spread and the purchase of a longer-dated option</p> <p>10 spread?</p> <p>11 A Correct.</p> <p>12 Q April is J and May is K, right, for the</p> <p>13 volatility --</p> <p>14 A Correct, correct.</p> <p>15 Q Okay. So Gecas probably came up with</p> <p>16 this trade, right?</p> <p>17 A Correct.</p> <p>18 Q How often did Scott Gecas' trade</p> <p>19 recommendations include a volatility swap? And</p> <p>20 you can do so on any time period, like per month,</p> <p>21 per week, just sort of anything that will give us</p> <p>22 a frame of reference.</p> <p>23 A Maybe once every other month.</p> <p>24 Q You testified that Mr. Gecas's trade</p>
<p style="text-align: right;">Page 118</p> <p>1 Q Did you learn it from Gecas?</p> <p>2 A Yes.</p> <p>3 MR. PLATT: I'd like to show you</p> <p>4 what I'm going to mark as CFTC Exhibit 497.</p> <p>5 (Whereupon CFTC Exhibit No. 497</p> <p>6 was marked for identification.)</p> <p>7 Q And this is an email from you to what</p> <p>8 looks like the group of brokers on April 24, 2018,</p> <p>9 subject line Trade Recommendations with a bunch</p> <p>10 of --</p> <p>11 A Correct.</p> <p>12 Q -- attachments. Do you see that,</p> <p>13 Mr. Donelson?</p> <p>14 A Yes, that is what it is.</p> <p>15 Q And the first two -- the attachments</p> <p>16 describe a trade, right? I'll scroll down.</p> <p>17 A Correct.</p> <p>18 Q And this is a PDF in the nature of a</p> <p>19 Long Leaf Trading recommendation. The attachment</p> <p>20 is a trade recommendation, right?</p> <p>21 A I'm sorry. I didn't catch the whole --</p> <p>22 Q Sorry. That was the worst question</p> <p>23 I've ever asked. This is a Long Leaf trade</p> <p>24 recommendation, correct?</p>	<p style="text-align: right;">Page 120</p> <p>1 designs ultimately performed poorly, correct?</p> <p>2 A Yes.</p> <p>3 Q And they performed so poorly that that</p> <p>4 was a factor in his termination, is that right?</p> <p>5 A Correct.</p> <p>6 Q Was that the sole factor in Scott Gecas'</p> <p>7 termination?</p> <p>8 A No.</p> <p>9 Q What other factors played a role in</p> <p>10 Mr. Gecas' termination?</p> <p>11 A His impact on the other APs. He was</p> <p>12 very negative.</p> <p>13 Q How did that play out in the office?</p> <p>14 A People wouldn't talk to him or</p> <p>15 wouldn't want to talk to him, and having somebody</p> <p>16 running a sales force that nobody wants to talk</p> <p>17 to is not effective.</p> <p>18 Q I agree. So do you recall the results</p> <p>19 from November of 2018?</p> <p>20 A They weren't good. I know that.</p> <p>21 Q Okay, yeah.</p> <p>22 A I don't remember the specifics.</p> <p>23 Q Okay, okay. That's fair. In a typical</p> <p>24 month -- how many recommendations did Long Leaf send</p>

<p style="text-align: right;">Page 121</p> <p>1 out in a typical month?</p> <p>2 A Four to five until 2019 where we</p> <p>3 tried to keep four positions on at all times,</p> <p>4 four (inaudible) positions.</p> <p>5 Q And the customer would say, yes,</p> <p>6 please execute or I don't want this trade, right?</p> <p>7 A Or sometimes they would say I don't</p> <p>8 want to take that many. I want to take fewer</p> <p>9 contracts.</p> <p>10 Q That's helpful. Thank you for that</p> <p>11 clarification. And can you estimate approximately</p> <p>12 how frequently Long Leaf customers did not accept</p> <p>13 the trade that was recommended to them; they said,</p> <p>14 no, I'm going to pass on that trade?</p> <p>15 A Just a ballpark would be maybe 15 to</p> <p>16 20 percent of the time either they declined it</p> <p>17 or did not respond.</p> <p>18 Q And that's for 2018 through 2019?</p> <p>19 A Yes.</p> <p>20 Q What about during the Evans era,</p> <p>21 how often did customers decline or not respond</p> <p>22 to trading recommendations?</p> <p>23 A I don't know.</p> <p>24 Q And you mentioned sometimes customers</p>	<p style="text-align: right;">Page 123</p> <p>1 Q Yeah, the underlying instrument of the</p> <p>2 option.</p> <p>3 A No.</p> <p>4 Q There was never a request that you</p> <p>5 modify a strike price to a particular trading</p> <p>6 recommendation?</p> <p>7 A No.</p> <p>8 Q Isn't it also true that no Long Leaf</p> <p>9 Trading program participants executed options</p> <p>10 trading strategies that they devised on their own?</p> <p>11 A Not to us. I'm sorry. It's thundering</p> <p>12 outside.</p> <p>13 Q I caught that. I'm sitting in a windowless</p> <p>14 office, so I don't know.</p> <p>15 A It could be snowing outside and you</p> <p>16 wouldn't know.</p> <p>17 Q Exactly.</p> <p>18 (Whereupon CFTC Exhibit No. 498</p> <p>19 was marked for identification.)</p> <p>20 Q Mr. Donelson, I'm going to show you</p> <p>21 a document I've marked as CFTC Exhibit 498, and</p> <p>22 this is Long Leaf Trading's response to the CFTC's</p> <p>23 first set of requests for admission. Do you see</p> <p>24 Exhibit 498 on your screen?</p>
<p style="text-align: right;">Page 122</p> <p>1 would deviate from the recommendation by saying</p> <p>2 I would like to do the trade, but I would like more</p> <p>3 contracts or I would like fewer contracts. Is that</p> <p>4 an accurate summary of your testimony?</p> <p>5 A That is correct.</p> <p>6 Q How often would that happen?</p> <p>7 A Much lower. Maybe 5 percent of the time.</p> <p>8 Q And there was never a request to deviate</p> <p>9 from the -- what I will call the core structure of</p> <p>10 the trade? Do you understand what I mean by the</p> <p>11 core structure of a recommended trade?</p> <p>12 A No.</p> <p>13 Q No, I'm sorry. It was a poorly</p> <p>14 formed question, so I'll ask it like this. Do</p> <p>15 you understand when I say the core structure of a</p> <p>16 trade, I mean the options that comprise the trade?</p> <p>17 A Yes.</p> <p>18 Q And did any customers ever request</p> <p>19 to deviate from that core structure as defined</p> <p>20 in that way?</p> <p>21 A No.</p> <p>22 Q So there was never a request to</p> <p>23 change the underlier of a trade recommendation?</p> <p>24 A You mean the underlying future?</p>	<p style="text-align: right;">Page 124</p> <p>1 A Yes, I do.</p> <p>2 Q I'm going to scroll down to Item 13.</p> <p>3 This is a question that we posed to Long Leaf</p> <p>4 through this mechanism that's provided for under</p> <p>5 procedural rules for litigation. And we asked</p> <p>6 Long Leaf Trading to admit that Long Leaf Trading</p> <p>7 did not limit participation in the trading program</p> <p>8 to existing customers, and Long Leaf interposed an</p> <p>9 objection that the request was vague and then denied</p> <p>10 it. What is it about this request that Long Leaf</p> <p>11 doesn't understand?</p> <p>12 A The question is can I add customers</p> <p>13 and then they'll participate. But if you're not an</p> <p>14 existing customer, you're not going to participate.</p> <p>15 Q I understand.</p> <p>16 A And, you know, if you're not our</p> <p>17 customer, you don't participate in our program.</p> <p>18 You can become a customer and participate in our</p> <p>19 program.</p> <p>20 Q I understand. And let me put it a</p> <p>21 different way, and with your explanation in mind</p> <p>22 I understand the objection. I think I've asked this</p> <p>23 today, but I'll clarify it now. It's true that Long</p> <p>24 Leaf employed a team of brokers to solicit members</p>

<p style="text-align: right;">Page 125</p> <p>1 of the public who did not have a preexisting 2 relationship with Long Leaf Trading to come open 3 accounts at Long Leaf Trading and participate in 4 the trading program, right? 5 A Yes. 6 Q So the next line on Item 20 here 7 on CFTC Exhibit 498, we ask Long Leaf to admit 8 that it had not disclosed to prospects any of the 9 information described in CFTC Rule 4.35(b), which 10 is generally information about a trading program's 11 performance, including but not limited to, 12 disclosing that neither Long Leaf Trading nor any of 13 its trading principals had ever previously directed 14 any accounts. And there's an objection here because 15 the meaning of directed any accounts is vague. 16 As a person who's participated 17 in this industry, is it true that you don't know 18 what the term directed any accounts means? 19 A Yes. 20 Q Have you ever heard the term directed 21 account before? 22 A I've heard managed account, but I've 23 never heard of a directed account. 24 Q Okay. So since you don't know what</p>	<p style="text-align: right;">Page 127</p> <p>1 that's what I don't -- I struggled with this, 2 along with our lawyer, of understanding when you 3 say it never -- had never previously directed. So 4 if you had a broker that worked someplace else and 5 came and started working, well, that person had 6 directed accounts, if that's what directed accounts 7 means, or is it just their time at Long Leaf? 8 Q Okay, that's helpful. And thank you 9 for that clarification. For time period let's 10 go with the time that you owned the company, the 11 Donelson period. And for the second clarification 12 let's use this -- let's read this as broadly as 13 possible. So I'll rephrase it. 14 During the Donelson period did 15 Long Leaf ever tell any prospective customers that 16 neither Long Leaf nor any of its trading principals 17 had ever directed any accounts? 18 A No, we never told anybody that we -- that. 19 Q And what about for the Evans period? 20 A I don't know. 21 Q Okay, thank you. 22 MR. PLATT: Can we take five? I'm 23 about to start a different topic that's going 24 to take like a half an hour.</p>
<p style="text-align: right;">Page 126</p> <p>1 a directed account is, is it fair to say that 2 Long Leaf Trading has never disclosed to prospects 3 that neither Long Leaf Trading nor any of its 4 trading principals had ever directed accounts? 5 A Could you repeat the question? 6 Q Sure. So your testimony -- 7 A My mind lapsed for a second. 8 Q No, I understand. And depositions 9 are long, so I get it. Your testimony was that 10 you haven't heard -- you don't have an understanding 11 of what the term directed accounts means in the 12 concept of the futures industry. So my question 13 is because you do not know what the term directed 14 accounts means, is it also true that you have -- 15 that Long Leaf Trading never disclosed to 16 prospective customers that neither Long Leaf 17 Trading nor any of its trading principals had 18 ever previously directed any accounts? 19 A I'm still confused by the question 20 on two points. Long Leaf Trading or any of its 21 trading principals, that would include Tim Evans, 22 that would include anybody who worked for Long Leaf. 23 And when you say ever previously, are you talking 24 about at a different firm, are you talking about --</p>	<p style="text-align: right;">Page 128</p> <p>1 MR. FALVEY: Sure. 2 THE WITNESS: Sure. 3 MR. PLATT: Let's go off the record, 4 please. 5 (Whereupon a recess was taken from 6 1:24 p.m., to 1:33 p.m., after which 7 the following proceedings were had:) 8 Q Mr. Donelson, another topic that you 9 and Mr. Burden covered yesterday and I'd like to 10 return to is the tracking of Long Leaf's trading 11 strategies. One strategy that you referenced 12 from the time you owned the company was the core 13 strategy, right? 14 A Correct. 15 Q I think you testified the core strategy 16 encompassed gut strangles in 2019, right? 17 A Correct. 18 Q For the record, what is a gut strangle? 19 A You buy an in-the-money put 20 and an in-the-money call and then you sell the 21 weekly against the monthly or that's effectively 22 the strategy. It's similar to a volatility swap, 23 but it doesn't require different volatilities. 24 Q Is it fair to say that a gut strangle</p>

<p style="text-align: right;">Page 129</p> <p>1 as you just described it is a four-legged options</p> <p>2 trade that's nondirectional in nature?</p> <p>3 A Correct.</p> <p>4 Q Where did you learn about gut strangles?</p> <p>5 A I first saw them when I was the CFO</p> <p>6 of the United Methodist Pension Plan as we were</p> <p>7 looking at alternate investments.</p> <p>8 Q Can you describe the duties and</p> <p>9 responsibilities that you had as the CFO of the</p> <p>10 United Methodist Pension Plan?</p> <p>11 A The CIO, the chief investment officer,</p> <p>12 reported to me, the actuarials I think reported</p> <p>13 to me, and then obviously the accounting function</p> <p>14 reported to me. When I say reporting, it was to</p> <p>15 assure that the plans were adequately funded.</p> <p>16 Q And who are the pensioners for the</p> <p>17 United Methodist Church? Like can you describe</p> <p>18 the organization to me?</p> <p>19 A Yeah, it is -- they are the ministers</p> <p>20 and laypeople of the United Methodist Church and</p> <p>21 the -- well, no, they're still laypeople, people</p> <p>22 who work in the boards. They're called boards but</p> <p>23 they're effectively -- like there's a board over</p> <p>24 finance. There's a board over pension. There's</p>	<p style="text-align: right;">Page 131</p> <p>1 management was?</p> <p>2 A 15 million.</p> <p>3 Q So other than the core of 2019,</p> <p>4 I think we also yesterday heard you testify about</p> <p>5 the edge strategy of 2019. And I think, and correct</p> <p>6 me if this is wrong, the edge was volatility swaps,</p> <p>7 is that right?</p> <p>8 A Some of them were -- the volatility</p> <p>9 swaps were also core and they were also edge.</p> <p>10 Edge had more to do with intraday response time and</p> <p>11 if people wanted, you know, a little higher return</p> <p>12 and would take a little more risk. But they were</p> <p>13 usually something we saw during the day, had to get</p> <p>14 out, and they needed to respond within two hours or</p> <p>15 less or we couldn't put the trade on so we would</p> <p>16 have to abandon the trade.</p> <p>17 Q Let me make sure I understand your</p> <p>18 testimony. So out of the volatility swap category,</p> <p>19 I understand there may have been many different</p> <p>20 underlying instruments for the volatility swap,</p> <p>21 right?</p> <p>22 A Correct.</p> <p>23 Q So among the volatility swaps, they</p> <p>24 could have been slotted into the core or the edge</p>
<p style="text-align: right;">Page 130</p> <p>1 a board over worship, you know. There's boards</p> <p>2 all over the place.</p> <p>3 Q I understand. And when did you hold this</p> <p>4 position of CFO of the United Methodist Church?</p> <p>5 A I'm trying to go backwards. It was</p> <p>6 like 2002 to 2004 or 2004 or 2006. It was right</p> <p>7 before I joined Getco.</p> <p>8 Q In what context did a gut strangle</p> <p>9 come up there? Was it the chief investment officer</p> <p>10 thinking about ways to put money to work?</p> <p>11 A It was an actual investment advisor</p> <p>12 pitching us on an investment opportunity. We didn't</p> <p>13 do any direct trading at the board.</p> <p>14 Q And so you heard this trade strategy</p> <p>15 in a pitch. Did the organization you were working</p> <p>16 for implement those trades?</p> <p>17 A No, we could not. We cannot trade</p> <p>18 derivatives.</p> <p>19 Q I understand.</p> <p>20 A You can, but it takes three layers</p> <p>21 of funds and it's not worth it.</p> <p>22 Q That makes sense. Incidentally,</p> <p>23 what was the -- at the time you worked there</p> <p>24 do you remember what the size of the assets under</p>	<p style="text-align: right;">Page 132</p> <p>1 strategy?</p> <p>2 A Both, yes.</p> <p>3 Q And so core could have comprised volatility</p> <p>4 swaps and gut strangle, right?</p> <p>5 A Correct.</p> <p>6 Q With lower response times?</p> <p>7 A Yes.</p> <p>8 Q And edge was all volatility swaps?</p> <p>9 A I believe so.</p> <p>10 Q And it was -- the defining characteristic</p> <p>11 of an edge trade was the quicker response time to</p> <p>12 take advantage of a perceived market imbalance?</p> <p>13 A Yes.</p> <p>14 Q Got it, got it. Helpful. And core</p> <p>15 and edge, I've seen in the documents, Mr. Donelson,</p> <p>16 this concept of cash management strategy. Is it</p> <p>17 right -- do I read these documents correctly that</p> <p>18 the cash management strategy was an umbrella term</p> <p>19 to encompass core and edge? Is that the way that</p> <p>20 Long Leaf Trading used that term?</p> <p>21 A Yes.</p> <p>22 Q And then there was another broader</p> <p>23 category of trade when you owned the firm called</p> <p>24 an opportunistic trade, is that right?</p>

<p style="text-align: right;">Page 133</p> <p>1 A Correct.</p> <p>2 Q And under opportunistic it was like sort</p> <p>3 of a market-driven like -- you know what, strike</p> <p>4 that. What were the market-driven or opportunistic</p> <p>5 trades?</p> <p>6 A They would usually be a two-legged</p> <p>7 directional trade. So one trade, I remember Syria</p> <p>8 released gas, you know, poison gas. We went out</p> <p>9 with a call on gold because if something happened</p> <p>10 over the weekend, everybody's going to rush to gold</p> <p>11 as security. That's a typical -- that would be</p> <p>12 typically what we say is a pure opportunistic trade</p> <p>13 and it would be two-legged.</p> <p>14 Q Understood. Directional in nature?</p> <p>15 A Directional in nature, correct.</p> <p>16 Q And so, you know, you've got a bucket of</p> <p>17 cash management trades and a bucket of opportunistic</p> <p>18 trades in 2019. What's the breakdown between the</p> <p>19 frequency with which each one is recommended? Was</p> <p>20 it like 50/50 cash management and opportunistic or</p> <p>21 75/25?</p> <p>22 A It would be more like 90/10.</p> <p>23 Q 90 cash management --</p> <p>24 A Yeah.</p>	<p style="text-align: right;">Page 135</p> <p>1 that those are mostly nondirectional in nature,</p> <p>2 is that right?</p> <p>3 A Yeah, they are all nondirectional.</p> <p>4 Q Okay, thank you. And then are any of</p> <p>5 these two-legged spreads or are they all four-legged</p> <p>6 spreads? I think you just described volatility</p> <p>7 swaps, broken wing condors, broken wing butterflies,</p> <p>8 ratio spreads and calendar spreads.</p> <p>9 A The ratio spread is a three-legged spread.</p> <p>10 Q Okay.</p> <p>11 A All the others are four.</p> <p>12 Q For 2018 and 2019 are there any</p> <p>13 categories of trading strategy that we haven't</p> <p>14 discussed?</p> <p>15 A There were some opportunistic trades</p> <p>16 there too, two-legged spreads, similar to what we</p> <p>17 did in 2019.</p> <p>18 Q In 2018, you mean?</p> <p>19 A In 2018.</p> <p>20 Q Similar breakdown do you think between</p> <p>21 four-legged and two-legged trades? Was it 90/10 for</p> <p>22 2018?</p> <p>23 A Probably more 95/5.</p> <p>24 MR. PLATT: Okay. I'm going to</p>
<p style="text-align: right;">Page 134</p> <p>1 Q -- 10 opportunistic?</p> <p>2 A Opportunistic were not used heavily,</p> <p>3 I mean, as the term would expect.</p> <p>4 Q And among cash management, core and</p> <p>5 edge, what do you think the breakdown was in 2019?</p> <p>6 A More like 80/20 between core and edge.</p> <p>7 Q So it sounds to me like the core trades</p> <p>8 are the most commonly recommended trades, is that --</p> <p>9 A Correct.</p> <p>10 Q -- right?</p> <p>11 A That's correct.</p> <p>12 Q And core comprises volatility swaps,</p> <p>13 gut strangles. Were there any other strategies that</p> <p>14 were used in the core strategy in 2019?</p> <p>15 A No. We got away from broken wing</p> <p>16 butterflies and condors.</p> <p>17 Q And so in 2018 what were the strategies</p> <p>18 that were employed by Mr. Gecas?</p> <p>19 A Broken wing butterfly, broken wing</p> <p>20 condor, volatility swaps, calendar spreads. We</p> <p>21 had one ratio spread.</p> <p>22 Q You're much more expert in options</p> <p>23 trading than I am, Mr. Donelson. But it sounds</p> <p>24 to me based on what you listed for Gecas' trades</p>	<p style="text-align: right;">Page 136</p> <p>1 show you a document I'm going to mark as</p> <p>2 CFTC Exhibit 499.</p> <p>3 (Whereupon CFTC Exhibit No. 499</p> <p>4 was marked for identification.)</p> <p>5 Q Can you see Exhibit 499, Mr. Donelson?</p> <p>6 A Yes.</p> <p>7 Q This is an email from you to the</p> <p>8 brokers Cybulski, Hatzigiannis and Stemper on</p> <p>9 June 25, 2019, subject line Trade Recommendation</p> <p>10 6-25. Then there's a bunch of attachments, right?</p> <p>11 A Yeah, that is correct.</p> <p>12 Q And you write, "This is a volatility</p> <p>13 swap in soybeans." Do you think this was probably</p> <p>14 slotted into --</p> <p>15 A Core.</p> <p>16 Q Slotted to the core?</p> <p>17 A Yes.</p> <p>18 Q Okay. And here's the actual</p> <p>19 recommendation. I don't know. Does it reflect</p> <p>20 on there whether it's core or edge? I don't think</p> <p>21 it does.</p> <p>22 A No. That became -- nobody paid attention</p> <p>23 to it one way or the other, so we finally -- the</p> <p>24 edge people moved their edge trades but the core</p>

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1 people didn't. It was just a trade recommendation.
 2 Q And how did you determine -- you know,
 3 you just mentioned sort of a group of edge people.
 4 Were those people who you knew -- I'll just ask you.
 5 How did you identify that subset of customer
 6 accounts?

7 A We would actually talk to the
 8 customers about whether they wanted to do this
 9 or not and whether they would be able to answer it.
 10 So they -- we did put it in front of them, but they
 11 were kind of required -- they had to agree to it.

12 Q So it sounds like the defining
 13 characteristics, you know, to be in the edge
 14 accounts was be able to respond quickly and desire
 15 the sort of risk profile of the trade?

16 A Correct.

17 Q Put 499 to the side. So yesterday
 18 you and Mr. Burden also discussed sort of at
 19 length what is marked as CFTC Exhibit 470, and
 20 I'll show you just to jog your memory here. And do
 21 you remember the attachment to 470 is Track Record
 22 Core Strategy May 20, 2019, right?

23 A Correct.

24 Q And there's this sort of -- there's

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1 a PDF with 13 trades reflecting their closed gain
 2 and loss percentage, correct?

3 A Correct.

4 Q And yesterday I think you testified
 5 that this was mostly gut strangles. Now it seems
 6 like, you know, there may have been some volatility
 7 swaps sprinkled in. It's not clear to me if that
 8 had happened by this point and, frankly, it doesn't
 9 matter. But this was a document that you created
 10 for the purpose of tracking a category of trades,
 11 right, the core strategy, right?

12 A Correct.

13 Q And CFTC Exhibit 200 is a document
 14 that you and Mr. Burden discussed also and I've
 15 pulled it up. It was attached to Hatzigiannis'
 16 email to a client or prospective client here called
 17 Edge Strategy Performance, and I'll scroll down.
 18 This was another document that you created to track
 19 the performance of a particular strategy, correct?

20 A Correct.

21 Q Do you remember why in Exhibit 200
 22 this only starts in sort of June of 2019? Is that
 23 when the edge trading really went into effect?

24 A Yes.

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1 Q Okay. Where are the documents that
 2 track other Long Leaf Trading strategies besides
 3 core and edge?

4 A I'm confused by the question.

5 Q So you described a set of core
 6 trades, a set of edge trades. I think we also
 7 talked about opportunistic trades. Like was there
 8 a document like Exhibit 470 or Exhibit 200 that
 9 tracked the performance of the opportunistic trades?

10 A It's all in the same file. It's just
 11 filtering. So we track all of the trades on one
 12 file and then if you want to see this or you want
 13 to see that, it's just a filter on the same file.

14 Q Okay, that's helpful. But at certain
 15 points in time you created particular documents by
 16 filtering your master file to reflect only the core
 17 trades and only the edge trades, right?

18 A Correct.

19 Q And we saw those on Exhibit 470 and
 20 Exhibit 200, right?

21 A Correct.

22 Q Was there ever a time when you
 23 filtered your document and created a report,
 24 filtered your master document and created a report

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1 for the opportunistic trades?

2 A No, there were only a couple of them.
 3 Never, never did a report on opportunistic trades.

4 Q What about trades that may not have
 5 slotted neatly into any category, was there like
 6 a miscellaneous report that you created from your
 7 master file?

8 A No.

9 Q On your core strategy document,
 10 which we saw in Exhibit 470 that you circulated
 11 in May of 2019, do you remember that document?

12 A Yes.

13 Q You testified that core was volatility
 14 swaps and gut strangles?

15 A Correct.

16 Q And earlier today you testified that
 17 you learned how to do volatility strangles from
 18 Scott Gecas, and he in fact implemented volatility
 19 swaps at Long Leaf Trading in 2018. So my question,
 20 Mr. Donelson, is why did you omit Gecas' volatility
 21 swaps from 2018 from your core strategy track record
 22 document which incorporated volatility swaps?

23 A At that time when we showed the core,
 24 the core was only gut strangles. We weren't doing

<p style="text-align: right;">Page 141</p> <p>1 volatility swaps.</p> <p>2 Q But there came a time where core</p> <p>3 encompassed volatility swaps, right? That's your</p> <p>4 testimony?</p> <p>5 A Yes.</p> <p>6 Q So once you sort of made that switch</p> <p>7 to including volatility swaps in that category,</p> <p>8 why didn't you go back and add in the complete set</p> <p>9 of trades to your track record document?</p> <p>10 A I don't know.</p> <p>11 MR. PLATT: I'm going to mark</p> <p>12 a document as CFTC Exhibit 450 -- or,</p> <p>13 excuse me, as 500.</p> <p>14 (Whereupon CFTC Exhibit No. 500</p> <p>15 was marked for identification.)</p> <p>16 Q This is -- you may recognize this</p> <p>17 as an email from Gecas to Gecas on May 3, 2018,</p> <p>18 and he blind carbon copies a bunch of Long Leaf</p> <p>19 Trading customers. The subject is Long Leaf Trading</p> <p>20 and the attachments are March Trade After Action</p> <p>21 Report and April Trade Recap. Do you see those?</p> <p>22 A Yes.</p> <p>23 Q I'm interested in the April trade</p> <p>24 report, so I'm just going to skip right down to it.</p>	<p style="text-align: right;">Page 143</p> <p>1 the trades. There's one set called core trades,</p> <p>2 there's another set called opportunistic trades,</p> <p>3 and then the trading goes poorly and you fire Gecas,</p> <p>4 right?</p> <p>5 A Correct.</p> <p>6 Q And then in 2019, if I understand</p> <p>7 your testimony correctly, you create a new category</p> <p>8 called core, a new category called opportunistic</p> <p>9 with largely overlapping characteristics, and then</p> <p>10 you start with a blank slate and create a new track</p> <p>11 record document, is that -- do you disagree with</p> <p>12 that summary?</p> <p>13 A I disagree that they were overlapping.</p> <p>14 Q Okay. What parts of the core strategies</p> <p>15 in 2018 don't overlap with the core strategies in</p> <p>16 2019?</p> <p>17 A Broken wing butterflies, broken wing</p> <p>18 condors, ratio spreads. Basically the only trade</p> <p>19 we carried forward was that volatility swap.</p> <p>20 Q But the broad category of being a</p> <p>21 four-legged option spread that's nondirectional</p> <p>22 in nature, that's a common theme between the core</p> <p>23 strategy in 2018 and the core strategy in 2019.</p> <p>24 And, in fact, there's at least one strategy,</p>
<p style="text-align: right;">Page 142</p> <p>1 We're scrolling through a bunch of fancy-looking</p> <p>2 images that Mr. Gecas included in his email. This</p> <p>3 is a document that Mr. Gecas circulated to Long Leaf</p> <p>4 customers. This attachment is titled April Trade</p> <p>5 Recap, and recall this is from May 3, 2018.</p> <p>6 In the first bullet point</p> <p>7 here on the first page of the April trade recap</p> <p>8 document this document reads, "We are striving to</p> <p>9 have four positions that match our criteria and meet</p> <p>10 the program goals in place consistently throughout</p> <p>11 the month. These are what we would define as Core</p> <p>12 trades, which will most often be four-legged</p> <p>13 spreads that are nondirectional." So this would</p> <p>14 encompass volatility swaps, broken wing butterflies,</p> <p>15 gut strangles, ratio spreads, right -- or not ratio</p> <p>16 spreads, excuse me, but the others?</p> <p>17 A Yes.</p> <p>18 Q And then the second bullet point</p> <p>19 says, "We are also looking to add trades which</p> <p>20 exploit short-term opportunities in the market.</p> <p>21 These trades we will define as opportunistic."</p> <p>22 You drafted this document, right, Mr. Donelson?</p> <p>23 A Correct.</p> <p>24 Q So in May of 2018 Gecas is designing</p>	<p style="text-align: right;">Page 144</p> <p>1 the volatility swap, that's exactly the same.</p> <p>2 Do you agree with that?</p> <p>3 A Not entirely, no.</p> <p>4 Q I want to make sure I understand</p> <p>5 what parts don't overlap between the two years.</p> <p>6 So explain your points of disagreement with that</p> <p>7 statement, please.</p> <p>8 A In 2018 all the options, other than</p> <p>9 volatility swaps, would have the same expiration.</p> <p>10 Everything going in 2019, the short options would</p> <p>11 have a shorter duration than the long option.</p> <p>12 Q And so with that caveat, that in</p> <p>13 2019 the trades may have had legs with slightly</p> <p>14 different expirations, there were still broadly</p> <p>15 overlapping categories of trades between the 2018</p> <p>16 core trades and the 2019 core trades?</p> <p>17 A Yes, there were overlapping categories</p> <p>18 of trades.</p> <p>19 Q And, in fact, some of the trades were</p> <p>20 exactly the same structure, the volatility swaps?</p> <p>21 A Correct.</p> <p>22 Q And notwithstanding the similarities</p> <p>23 between these two categories of core trades, the</p> <p>24 2018 category of core trades and then the 2019</p>

<p style="text-align: right;">Page 145</p> <p>1 category of core trades, Long Leaf Trading marketed</p> <p>2 the new strategy as sufficiently different from the</p> <p>3 old 2018 strategy to warrant a fresh start on the</p> <p>4 track record and to omit the 2018 trades, right?</p> <p>5 A Agreed.</p> <p>6 Q Do you think any customers were</p> <p>7 confused by the use of the term core trade at</p> <p>8 Long Leaf Trading to mean two slightly different</p> <p>9 things?</p> <p>10 A I don't know.</p> <p>11 Q I'm going to go back to CFTC</p> <p>12 Exhibit 477, which you looked at with Mr. Burden</p> <p>13 yesterday as well. Do you recognize CFTC</p> <p>14 Exhibit 477, Mr. Donelson? This is Hatzigiannis</p> <p>15 to you on October 23, 2019, subject line Send Out</p> <p>16 Email Permission?</p> <p>17 A Yes.</p> <p>18 Q And scrolling down, you know,</p> <p>19 Mr. Hatzigiannis begins this email chain by</p> <p>20 seeking your approval to send out a solicitation</p> <p>21 email that says, and I quote, "We have closed</p> <p>22 out 30 out of our past 35 trades for a profit,"</p> <p>23 and he includes a link to a PDF. And I think your</p> <p>24 testimony yesterday was, you know, I can't comment</p>	<p style="text-align: right;">Page 147</p> <p>1 closed trades that were entered between June 18,</p> <p>2 2019 and October 15th of 2019, correct?</p> <p>3 A Correct.</p> <p>4 Q So either three or four months' worth</p> <p>5 of trading activity depending on how you calculate</p> <p>6 it from the entry or the exit, right?</p> <p>7 A Correct.</p> <p>8 Q And this reflects a return of \$6700. It's</p> <p>9 not clear the value of the account but certainly net</p> <p>10 profits. Do you agree with that?</p> <p>11 A Correct.</p> <p>12 Q And in fact it reflects, as</p> <p>13 Mr. Hatzigiannis suggests, 30 out of 35 winners</p> <p>14 for this time period, right?</p> <p>15 A Correct.</p> <p>16 Q Let's go back to 477 now that you've</p> <p>17 been able to see Mr. Hatzigiannis' attachment, and</p> <p>18 you write the issue I have is that it's selective.</p> <p>19 And so there was a time, Mr. Donelson, when this</p> <p>20 concept of disclosing only a subset of trading</p> <p>21 results struck you the wrong way.</p> <p>22 My question is sort of with</p> <p>23 that in mind, do any of the other documents that</p> <p>24 we looked at yesterday or today where Long Leaf</p>
<p style="text-align: right;">Page 146</p> <p>1 on what this means because I can't see the PDF.</p> <p>2 Do you remember that?</p> <p>3 A Correct.</p> <p>4 Q I'm going to show you what I'm</p> <p>5 marking as CFTC Exhibit 501, which is an email</p> <p>6 from James Hatzigiannis on October 21, 2019 to</p> <p>7 compliance@longleaftrading.com, subject Long Leaf</p> <p>8 Update.</p> <p>9 (Whereupon CFTC Exhibit No. 501</p> <p>10 was marked for identification.)</p> <p>11 Q Did you monitor the inbox</p> <p>12 compliance@longleaftrading.com?</p> <p>13 A It actually just came to my inbox.</p> <p>14 Q So it automatically would go to you?</p> <p>15 A Yes.</p> <p>16 Q So the attachment is Long Leaf</p> <p>17 Update 10.18.19.pdf. And in Mr. Hatzigiannis'</p> <p>18 email to you on CFTC Exhibit 477 the attachment is</p> <p>19 titled Long Leaf Update 10.18.19.pdf. Do you have</p> <p>20 any reason to think that these are not the same</p> <p>21 document?</p> <p>22 A No.</p> <p>23 Q And scrolling down to the attachment</p> <p>24 that Mr. Hatzigiannis sent to you, it reflects</p>	<p style="text-align: right;">Page 148</p> <p>1 only discloses a subset of its trading results,</p> <p>2 do any of those documents give you concern in</p> <p>3 hindsight?</p> <p>4 A No, because it bases it on what the</p> <p>5 question the person is asking. James is talking</p> <p>6 about the entire program and he's only -- that's</p> <p>7 actually an account that only started in June.</p> <p>8 Q I'm not sure I understand. James</p> <p>9 isn't asking a question. James is sending you a</p> <p>10 draft email that he hasn't sent out yet, he's not</p> <p>11 responding to anyone, and he's asking you will this</p> <p>12 be okay. And then --</p> <p>13 A Correct.</p> <p>14 Q -- and then you say I have an issue with</p> <p>15 it. So what's the issue?</p> <p>16 A The issue is that it only starts in June.</p> <p>17 Q So it only includes a subset of Long Leaf's</p> <p>18 trading activity, that's the problem?</p> <p>19 A Correct.</p> <p>20 Q Why is it a problem to send out</p> <p>21 only a subset of Long Leaf's trading activity to</p> <p>22 prospective customers?</p> <p>23 A It's not showing the complete history.</p> <p>24 Q Why is it important to show the complete</p>

<p style="text-align: right;">Page 149</p> <p>1 history to prospective customers?</p> <p>2 A They should see.</p> <p>3 Q They should see it because it's</p> <p>4 important to an investing decision to know how</p> <p>5 the investment advisor performs, correct?</p> <p>6 A Correct.</p> <p>7 Q And it's not sufficient to show</p> <p>8 the prospective investor just a subset of the</p> <p>9 trading activity, correct, because it only provides</p> <p>10 an incomplete picture, right?</p> <p>11 A Correct.</p> <p>12 MR. FALVEY: Jody, we've given</p> <p>13 some leeway on going over turf and the same</p> <p>14 questions that Ashley was getting at yesterday.</p> <p>15 Are we -- can you get back to the 30(b)(6)</p> <p>16 questions?</p> <p>17 MR. PLATT: Yeah, that's fair, Jim.</p> <p>18 I think these are pretty well within the list</p> <p>19 of topics, but I'll move on.</p> <p>20 MR. FALVEY: Thank you.</p> <p>21 THE WITNESS: Can I request a quick break?</p> <p>22 MR. PLATT: Sure. Yes, of course. Ten</p> <p>23 minutes.</p> <p>24 THE WITNESS: Thank you.</p>	<p style="text-align: right;">Page 151</p> <p>1 (Whereupon CFTC Exhibit No. 502</p> <p>2 was marked for identification.)</p> <p>3 Q Do you recognize this as an email</p> <p>4 that you sent to the Long Leaf brokers on April 4,</p> <p>5 2019, subject line Detail for Trade?</p> <p>6 A Yes.</p> <p>7 Q There's one attachment titled Trade</p> <p>8 Bond Hedge for Jobs Report Detail, and your email</p> <p>9 is one sentence. It says, "Here it is customer by</p> <p>10 customer," right?</p> <p>11 A Correct.</p> <p>12 Q I'm just going to scroll down to the</p> <p>13 attachment, Mr. Donelson, and it looks like sort</p> <p>14 of an excerpt of an Excel file that shows the broker</p> <p>15 number in one column, the account number in the</p> <p>16 next column, the account name in the third column</p> <p>17 and then there's a title -- there's a column with</p> <p>18 the title Total. Does that reflect the number of</p> <p>19 contracts that would be recommended to the customer</p> <p>20 for this particular trade?</p> <p>21 A Yes.</p> <p>22 Q And there are a bunch of different</p> <p>23 numbers in the total column. There's a 1, there's</p> <p>24 a 2, there's a 3, there's a 4, there's an 8, there's</p>
<p style="text-align: right;">Page 150</p> <p>1 MR. FALVEY: Okay.</p> <p>2 (Whereupon a recess was taken from</p> <p>3 2:12 p.m., to 2:20 p.m., after which</p> <p>4 the following proceedings were had:)</p> <p>5 BY MR. PLATT:</p> <p>6 Q Mr. Donelson, earlier today we discussed</p> <p>7 the trading recommendations that were sent out to</p> <p>8 Long Leaf customers.</p> <p>9 A Yes.</p> <p>10 Q And in each recommendation do you</p> <p>11 generally agree that there's information about</p> <p>12 the trades and then information about the number</p> <p>13 of contracts that the customers can receive?</p> <p>14 A Correct.</p> <p>15 Q And the trade itself, the trade</p> <p>16 structure was the same for every customer who</p> <p>17 received the recommendation, but there was variance</p> <p>18 among the number of contracts that were recommended</p> <p>19 to particular customers, right?</p> <p>20 A Correct.</p> <p>21 Q So I want to show you an example of</p> <p>22 one to make sure that I understand it properly.</p> <p>23 MR. PLATT: I'm going to mark CFTC</p> <p>24 Exhibit 502.</p>	<p style="text-align: right;">Page 152</p> <p>1 a 6. So there's about four or five different</p> <p>2 options in terms of the number of contracts, right?</p> <p>3 A Correct.</p> <p>4 Q Then the brokers would take this</p> <p>5 information and relay the recommendation to the</p> <p>6 customer, is that right?</p> <p>7 A Correct.</p> <p>8 Q What are the factors that went into</p> <p>9 Long Leaf's determination concerning how many</p> <p>10 contracts to recommend to a particular customer?</p> <p>11 A One would obviously be the size</p> <p>12 of the account. The other would be -- another</p> <p>13 would be how new they are to the program and then</p> <p>14 also any adjustments that had been given by the</p> <p>15 client to that number in the past.</p> <p>16 Q So that last item that you described,</p> <p>17 adjustments by the client in the past, could that</p> <p>18 be like the client may have reflected or expressed</p> <p>19 a higher or lower risk tolerance in the past and</p> <p>20 you're adjusting -- you are tailoring your</p> <p>21 recommendation on that basis?</p> <p>22 A Yes, also certain -- whether they</p> <p>23 would trade the specific underlying contract</p> <p>24 or not. Some customers would not trade. We</p>

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1 had a customer who was Muslim and would not trade
2 hogs. We had a customer who was a trader of the
3 E-mini, so he didn't want anything to do with E-mini
4 trades. We had some people, as I said earlier, that
5 traded options outside of what we were doing, that
6 they wouldn't take things that they were already
7 trading.

8 Q And this outside trading, it didn't occur
9 at Long Leaf, right?

10 A No.

11 Q So it sounds -- to sum all that up,
12 it sounds like Long Leaf knew its customers pretty
13 well and was able to tailor its recommendations
14 based on its knowledge of the clients' trading
15 preferences, right?

16 A Correct.

17 MR. PLATT: I've got one more just to
18 make sure I fully understand it. I'm going
19 to mark this as CFTC Exhibit 503.

20 Q Mr. Donelson, do you recognize this
21 as an email from -- actually, I'm sorry. We already
22 looked at this document. I've marked this as --

23 A 500, I think.

24 Q Your memory's probably better than mine.

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1 A But only for a short period of time
2 and then --

3 Q I think it's 499 if I did it right.

4 MR. FALVEY: We can say 499-1/2 if you
5 want.

6 MR. PLATT: I'm going to say 499 for the
7 sake of the record.

8 MR. FALVEY: Sounds good.

9 BY MR. PLATT:

10 Q So there are five PDF attachments to
11 this document. There's the customer list, there's
12 seven contracts, three contracts, two contracts and
13 one contract. I'm going to just scroll through them
14 very briefly. And the customer list is -- contains
15 information of the kind we saw on Exhibit 502
16 with sort of the account number, the account name
17 and then on the right-hand total column, that's the
18 number of contracts that would be recommended,
19 right?

20 A That is correct.

21 Q And then the remaining PDFs are the
22 trade recommendation documents that are tailored
23 for however many contracts are being recommended.
24 So on this document you can see on the top right

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1 above the box, "We are recommending a total of
2 7 contracts for each recommended position below,"
3 right?

4 A Correct.

5 Q And then the next PDF attachment says,
6 "We are recommending a total of 3 contracts for each
7 recommended position below," right?

8 A Correct.

9 Q So you would send this email to the
10 brokers. They would look at the customer list
11 and then disseminate the corresponding PDF based
12 on the appropriate number of contracts?

13 A Correct.

14 Q Mr. Donelson, what was an adjustment
15 trade in the context of Long Leaf, the Long Leaf
16 Trading program?

17 A There were typically two types.

18 One is we sold the short option. It expired.

19 We have a lot of long -- we have a lot of times

20 at the end it's not profitable at the moment, so

21 we'll sell another set of short options. Then the

22 one you showed me, which is a hedge of -- they were

23 in a good position. However, you know, we had a big

24 jobs report coming up. So we put a hedge in place

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1 at no commission just to protect that.

2 Q And when you would recommend trade
3 adjustments, would you recommend particular numbers
4 of -- particular amounts of contracts for particular
5 customers?

6 A It would be equal to what the
7 initial entry was. So if you had five contracts,
8 you're going to get five contracts. If you had
9 one contract, you want one contract. You can
10 still -- obviously they can, and sometimes did,
11 say no, I don't want to take the contract. But
12 we didn't want them to have two short and one long
13 and create a problem.

14 Q I understand. So for adjustment trades
15 Long Leaf Trading would go look at the customer's
16 trading history, determine what their original
17 position was and tailor the adjustment trading
18 recommendation to that prior trading activity?

19 A Yeah. We would actually download
20 it from the trading system of what their current
21 position was.

22 Q Got it. Thank you. And so we've been
23 discussing -- and just to clarify the record about
24 trading recommendations and number of contracts,

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1 this has been for the time period that you owned
 2 the firm, right?
 3 A Correct.
 4 Q Do you have an understanding of how
 5 Long Leaf determined the number of contracts for
 6 customers to execute during the Evans period?
 7 A I have what he told me. I don't have how
 8 did that actually play out.
 9 Q What did Evans tell you about how Long
 10 Leaf Trading determined the number of contracts to
 11 recommend for a particular trade when he owned --
 12 A It was very similar to what I just
 13 explained, that they look at the balance of the
 14 account, the news of the account and any particulars
 15 about the individual.
 16 Q Thank you. Mr. Donelson, did Long Leaf
 17 provide recaps or summaries of how its trading
 18 activity performed for, you know, a month-long
 19 period or a week-long period?
 20 A We did. More was for an individual
 21 asking for a complete account breakdown. The
 22 trading history reports you've seen mostly because
 23 it's very hard to track what we called this trade
 24 into what it looks like in your statement.

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1 Q Does it ring a bell that these were
 2 called like postmortems or after action reports?
 3 A Yes.
 4 Q What information was Long Leaf
 5 trying to convey to customers with reports that
 6 were titled postmortems or after action reports?
 7 A It was we took this trade, you know,
 8 you agreed to this trade. Here's how that trade
 9 played out. Here's kind of an explanation of what
 10 went on in the market.
 11 Q And was the goal sort of like we want to
 12 make sure customers know what's going on?
 13 A Yes.
 14 MR. PLATT: I'm going to show you
 15 what's -- what I'm going to mark as CFTC
 16 Exhibit 503.
 17 (Whereupon CFTC Exhibit No. 503
 18 was marked for identification.)
 19 Q So if I did it right, I think I'm
 20 going to show you what was probably like the first
 21 postmortem or after action report that you did on
 22 January 31, 2018 and the subject is January Trade
 23 Recap.
 24 A Yep.

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1 Q And is this sort of the first one that
 2 you did --
 3 A Yes.
 4 Q -- once you owned the firm?
 5 A Yes.
 6 Q And then you write -- in this email you
 7 write to the brokers, "We will follow up each month
 8 with a postmortem of the trading for that month. So
 9 I will update this with final results based on the
 10 expected entry," is that right?
 11 A Yes.
 12 Q Scrolling down to the recap, the
 13 attachment, it's sort of a narrative describing the
 14 mechanics of the trade and the market conditions.
 15 Is that a fair summary?
 16 A Correct.
 17 Q Did Long Leaf Trading in its
 18 postmortems ever include information about the
 19 profit and loss associated with a particular trade?
 20 A Can you scroll down on this? I'm --
 21 Q (Scrolling).
 22 A Yeah. This is the first month we put
 23 on long positions, so this would not have been the
 24 result of the trade. This would be the entry of the

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1 trade.
 2 Q Okay, that's helpful. So, Mr. Donelson,
 3 my question is I've looked at quite a few of these
 4 postmortems or after action reports and they
 5 generally take the form of Exhibit 503, like a
 6 narrative describing the structure of the trade
 7 and the market conditions. But I have never seen
 8 one that says, you know, Trade XYZ, if you traded
 9 one contract, you would have made 400 bucks.
 10 Did you ever include profit
 11 and loss information in your trade recaps or your
 12 after action reports?
 13 A I don't remember.
 14 Q During the Evans period did Long Leaf
 15 Trading circulate trading recaps or after action
 16 reports summarizing trading activity?
 17 A I don't know.
 18 Q If the goal was to increase
 19 transparency into the performance of Long Leaf's
 20 trading program, why didn't Long Leaf Trading
 21 circulate trading results on a monthly basis along
 22 with these postmortems and after action reports?
 23 A I was working on a better report for
 24 an individual that could go out and say here's

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1 the exact trades.
 2 Q Did that ever come to fruition,
 3 the better report that was tailored to individual
 4 accounts?
 5 A Yeah, I -- we would send them out to
 6 clients, not on an ongoing basis but as requested.
 7 Q When did that start? I think the
 8 first one of those -- I know the documents you're
 9 talking about. I think the first ones that I've
 10 seen pop up in the spring of 2019. Does that sound
 11 right?
 12 A No, there were reports long before that,
 13 I think as early as February 2018.
 14 Q So Long Leaf had the ability to
 15 generate reports reflecting trade-by-trade profit
 16 and loss, but it only did so if requested by a
 17 client and it did not do so to circulate with
 18 its after action reports. Is that your testimony?
 19 A I don't remember if it was in the after
 20 action reports.
 21 Q Well, it's not in CFTC Exhibit 503,
 22 right? 503 doesn't include closed PNL information,
 23 right?
 24 A That was the one you just showed me?

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1 Q Yes.
 2 A No, it's not in that report.
 3 Q I have not seen any postmortems,
 4 summaries or after action reports that include
 5 closed trade PNL. Sitting here today, can you
 6 identify any after action reports or postmortems
 7 that include closed trade PNL?
 8 A No.
 9 Q But you do remember responding to
 10 customer requests for PNL summaries for their own
 11 individualized accounts, right?
 12 A Correct.
 13 Q And you generated those in response to
 14 those requests?
 15 A Correct.
 16 Q Mr. Donelson, have you looked at the
 17 CFTC's complaint in this action?
 18 A Yes.
 19 Q What's your understanding of the
 20 nature of the legal claims against Long Leaf
 21 Trading?
 22 A There are charges of fraud. There
 23 are charges of not being registered as a CTA, false
 24 and misleading statements as a CTA, not filing the

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1 requisite documents for a CTA and registration
 2 of APs.
 3 Q I agree with your summary. And
 4 to bucket those out, do you agree that there
 5 are fraud claims and there are registration claims,
 6 two different buckets?
 7 A Correct.
 8 Q And, you know, you're not a lawyer.
 9 MR. PLATT: So, Mr. Falvey, if you want
 10 to jump in on any of these questions, feel free
 11 to object.
 12 MR. FALVEY: Okay.
 13 MR. PLATT: But just trying to categorize,
 14 you know, the content of the complaint.
 15 MR. FALVEY: That's fine.
 16 BY MR. PLATT:
 17 Q So you referenced this violation that
 18 the CFTC has charged Long Leaf Trading with for
 19 operating as a commodity trading advisor without
 20 registration.
 21 A Correct.
 22 Q And that was in the complaint. And
 23 my question to you, Mr. Donelson, as Long Leaf's
 24 corporate designee is did Long Leaf or any of its

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1 agents ever ask a lawyer whether or not Long Leaf
 2 was required to register as a commodity trading
 3 advisor?
 4 A Yes.
 5 Q Which lawyer did you ask?
 6 A Ms. Rebecca Wing.
 7 Q When did you ask Ms. Wing whether
 8 or not Long Leaf Trading was required to register
 9 as a CTA?
 10 A It's one of the responses but before
 11 the acquisition and even after the acquisition
 12 whether we should be registered as a CTA given
 13 the facts.
 14 Q I'm going to show you what I've
 15 previously marked as Exhibit 355, and you just
 16 referenced it. This is a document that Long Leaf --
 17 I think you produced in discovery, and I'll show it
 18 to you. Just take a look at it and refamiliarize
 19 yourself with Exhibit 355, please.
 20 MR. FALVEY: Can you blow it up a tad,
 21 Jody.
 22 MR. PLATT: Yeah, yep, sorry. This is
 23 tiny print. Sorry about that.
 24 MR. FALVEY: No worries.

<p style="text-align: right;">Page 165</p> <p>1 MR. PLATT: Is that legible?</p> <p>2 THE WITNESS: Yes.</p> <p>3 MR. FALVEY: Yep, thanks.</p> <p>4 A Yes.</p> <p>5 BY MR. PLATT:</p> <p>6 Q Do you recognize Exhibit 355, Mr. Donelson?</p> <p>7 A Yes, I do.</p> <p>8 Q Did you draft it?</p> <p>9 A Yes.</p> <p>10 Q And so there are four discrete</p> <p>11 conversations listed on here. I'm really only</p> <p>12 interested in the first one. Do you generally agree</p> <p>13 that the second, third and fourth conversations</p> <p>14 listed in order from top to bottom are about your</p> <p>15 registration personally as an associated person?</p> <p>16 A Correct.</p> <p>17 Q And the first conversation up at the</p> <p>18 top is about Long Leaf's registration status as</p> <p>19 a commodity trading advisor?</p> <p>20 A Correct.</p> <p>21 Q And the dates here are -- it's sort</p> <p>22 of a broad date range, and I just want to drill</p> <p>23 down on this a little bit. The dates are listed</p> <p>24 as November 1, 2017 through February 28, 2018.</p>	<p style="text-align: right;">Page 167</p> <p>1 and what the exact rules are around that.</p> <p>2 Q Do you know whether or not Ms. Wing</p> <p>3 conducted any legal research on this issue?</p> <p>4 A I do not.</p> <p>5 Q Did she bill you for this advice?</p> <p>6 A Yes.</p> <p>7 Q When Ms. Wing sent you bills for legal</p> <p>8 services, were you billed by the hour or was it</p> <p>9 sort of a flat fee arrangement?</p> <p>10 A For the acquisition it was a flat fee.</p> <p>11 Q Subsequent to that?</p> <p>12 A Hourly.</p> <p>13 Q Did Ms. Wing ever tell you that,</p> <p>14 you know, she needed to take some time to review</p> <p>15 regulatory authority on these issues or did she just</p> <p>16 like give you the answer sort of in the course of</p> <p>17 the conversation?</p> <p>18 A She didn't tell me in the conversation</p> <p>19 when I asked. She came back to me a couple weeks</p> <p>20 later on it.</p> <p>21 Q Did she explain the basis for her legal</p> <p>22 opinion?</p> <p>23 A Yes.</p> <p>24 Q What did she tell you?</p>
<p style="text-align: right;">Page 166</p> <p>1 Is this meant to capture like there was one</p> <p>2 conversation during that time period, there was</p> <p>3 a series of conversations? How did it work?</p> <p>4 A There were a series of conversations</p> <p>5 and the best way to separate it is pre-acquisition,</p> <p>6 post-acquisition. So pre-acquisition we were</p> <p>7 looking at the information being provided by</p> <p>8 Mr. Evans. I was -- I asked her to review should</p> <p>9 this be registered as a CTA.</p> <p>10 Q And I take it --</p> <p>11 A And after -- after acquisition is the</p> <p>12 continuation of that conversation now that we have</p> <p>13 more insight than what's just in the acquisition</p> <p>14 documents.</p> <p>15 Q In Exhibit 355 there's a sentence</p> <p>16 that says, "We reviewed the requirements, looked</p> <p>17 at the ongoing review of the NFA and information</p> <p>18 provided by Mr. Evans." There's three discrete</p> <p>19 concepts there, and I'd just like to ask you</p> <p>20 about each of them. What does it mean when you</p> <p>21 say we reviewed the requirements? What did you and</p> <p>22 Mrs. Wing look at? Or Ms. Wing, sorry.</p> <p>23 A She's obviously the lawyer in this,</p> <p>24 so she reviewed all the requirements to be a CTA</p>	<p style="text-align: right;">Page 168</p> <p>1 A That we did not have control of the</p> <p>2 accounts.</p> <p>3 Q That was the key factor for Ms. Wing</p> <p>4 at that pre-acquisition conversation concerning</p> <p>5 Long Leaf's registration status?</p> <p>6 A Correct.</p> <p>7 Q What about after the acquisition? You</p> <p>8 testified that based on -- you know, I don't know</p> <p>9 if you learned new information about the company.</p> <p>10 You had been operating it for some time, so you</p> <p>11 clearly knew more about it than what Mr. Evans had</p> <p>12 told you. Did you provide -- excuse me. Strike</p> <p>13 that. What additional information did you provide</p> <p>14 to Ms. Wing during the post-acquisition conversation</p> <p>15 concerning Long Leaf's registration status?</p> <p>16 A Updates on the NFA review.</p> <p>17 Q I have two questions. I'm just</p> <p>18 going to ask them and I can clarify it if you</p> <p>19 need them clarified. One, what review are you</p> <p>20 talking about and, two, what about that review did</p> <p>21 you tell Ms. Wing that was relevant to Long Leaf's</p> <p>22 registration status?</p> <p>23 A The review that started in August of</p> <p>24 2017 and concluded in February of 2018 is the answer</p>

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1 to the first question. Second question, basically
 2 an update on the status of it.
 3 Q What do you mean --
 4 A We knew it was in progress at the time
 5 of the acquisition. We did not have the conclusion
 6 of it, which didn't happen until February.
 7 Q Was there any factual information
 8 connected to the fall of 2017 NFA audit that you
 9 provided to Ms. Wing in connection with the post-
 10 acquisition legal advice concerning Long Leaf's
 11 registration status?
 12 A I provided her the exit letter.
 13 Q What did the exit letter say?
 14 A Two things. One is that we needed to
 15 put the number of contracts on the recommendation,
 16 and the second was he needed to record the checks
 17 when they were written, not when they were cashed.
 18 Q Was this a letter that was addressed
 19 to Long Leaf Trading?
 20 A I'm not sure if it's addressed to Tim
 21 Evans or Long Leaf Trading but one of those two.
 22 It's from the NFA.
 23 Q And was this post-acquisition conversation
 24 concerning Long Leaf's registration status, do you

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1 think that happened in like February of 2018 based
 2 on the registration conversations document or do
 3 you think it happened later?
 4 A I would say it happened near the end
 5 of February once we had the final NFA document.
 6 Q So by then you had a three-month sample
 7 to understand the way that Long Leaf's trading
 8 program operated and the extent to which Long Leaf's
 9 customers followed the trading recommendations, is
 10 that right?
 11 A Correct.
 12 Q What did Ms. Wing say in her legal opinion
 13 in the post-acquisition conversation concerning Long
 14 Leaf's registration status about whether or not Long
 15 Leaf Trading was properly registered only as an
 16 introducing broker?
 17 A She reiterated that we did not have
 18 control of the accounts and that we would -- did
 19 not need to be registered as a CTA.
 20 Q Did Ms. Wing ever ask any questions for
 21 facts other than whether or not Long Leaf Trading
 22 had control over the accounts?
 23 A Yes.
 24 Q What kinds of questions did Ms. Wing

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1 ask you?
 2 A How many accounts there were, the kind
 3 of rate of people accepting or, you know, declining
 4 the recommendations.
 5 Q Do you remember anything else she asked
 6 about in connection with her advice concerning Long
 7 Leaf Trading's registration status?
 8 A I don't remember anything else.
 9 Q Did Long Leaf Trading ever tell Ms. Wing
 10 that approximately 90 percent of its revenues came
 11 from the trading program?
 12 A I don't remember.
 13 Q Did Long Leaf Trading ever tell
 14 Ms. Wing that no customers in the trading program
 15 ever deviated from the structure of the trading
 16 recommendation as it was recommended?
 17 A I don't remember.
 18 Q Did Long Leaf Trading attempt to describe
 19 the frequency with which customers accepted its
 20 trading recommendations?
 21 A I don't remember.
 22 Q Did Long Leaf Trading tell Ms. Wing that,
 23 you know, to the extent any customer deviated from
 24 the trading recommendation, the only deviation was

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1 a minor detail of the number of contracts, and even
 2 then it was at most 5 percent of the customers for
 3 any particular trade?
 4 A Ask that question again, please.
 5 Q Concerning information provided to
 6 Ms. Wing in connection with legal advice about
 7 whether or not Long Leaf Trading was required to
 8 register as a commodity trading advisor, did Long
 9 Leaf Trading tell Ms. Wing or any of its agents or
 10 employees tell Ms. Wing that the only deviations
 11 from the recommended trades by trading program
 12 customers related to the number of contracts that
 13 would be executed and if there was deviation, it
 14 only occurred in, as you testified, 5 percent of the
 15 trading recommendations?
 16 A No.
 17 Q Did Long Leaf Trading in connection
 18 with seeking legal advice from Ms. Wing on the
 19 issue of whether or not it should register as a
 20 commodity trading advisor, did Long Leaf Trading
 21 ever tell Ms. Wing that among the trading program
 22 participants, no customers executed trades other
 23 than the recommended trades?
 24 A I don't remember.

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1 Q Were there any documents or notes
 2 reflecting these conversations?
 3 A They're mostly phone calls.
 4 Q Ms. Wing never like put in an email
 5 here's my justification --
 6 A Not that I know of.
 7 Q Well, it would have gone to your Long
 8 Leaf Trading email probably, right?
 9 A I would assume so, yes.
 10 Q I know you're not a lawyer,
 11 Mr. Donelson, but did you ever conduct any
 12 searches on the internet or otherwise about when
 13 an introducing broker is required to dually register
 14 as a commodity trading advisor?
 15 A I only looked at the NFA website, which --
 16 Q What information did you learn from
 17 the NFA website on the issue of whether or not Long
 18 Leaf Trading may be required to dually register as
 19 an introducing broker and a commodity trading
 20 advisor?
 21 A It listed five things, the first one
 22 being you had to have discretion over the account.
 23 The second one had to do with numbers of people
 24 that you sent the recommendation to. To be honest,

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1 I don't remember all the other three.
 2 Q Your recollection is that the
 3 NFA website says that only introducing brokers
 4 that have discretion over customers' accounts are
 5 required to register as commodity trading advisors?
 6 A That's what it said, yes.
 7 Q Or do you think maybe it says having
 8 discretion over a customer's account is sufficient
 9 but not necessary to require dual registration as an
 10 introducing broker and commodity trading advisor?
 11 A I turned the matter over to Ms. Wing,
 12 who's a lawyer, and took her advice on whether we
 13 should be registered or not.
 14 Q Mr. Donelson, I understand that you
 15 asked Ms. Wing or you say that you asked Ms. Wing
 16 for legal advice on this issue. What I'm trying to
 17 get at is did you ever do any independent research
 18 as a very well-educated corporate professional
 19 that would call into question her -- the advice
 20 that she gave you? Did you ever question her and
 21 say, Ms. Wing, I looked at the NFA website and they
 22 had a bunch of factors and we hit all of them? Did
 23 you ever say something like that? Was there ever
 24 a conversation of that nature?

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1 A No.
 2 Q Upon reviewing the NFA website, as
 3 you described, did you ever think to yourself that
 4 Long Leaf met the criteria that were listed by the
 5 NFA?
 6 MR. FALVEY: Objection. As Jody has
 7 pointed out before, Mr. Donelson is not an
 8 attorney, but go ahead and answer.
 9 A Parts of it did, parts of it didn't.
 10 I relied on her expertise in the field.
 11 BY MR. PLATT:
 12 Q You testified earlier that Ms. Wing
 13 told you that the reason that Long Leaf did not
 14 have to register as a commodity trading advisor
 15 was because it did not exercise discretion over
 16 customer accounts. Did it ever make you question
 17 her expertise to know that her advice didn't line
 18 up with the factors listed on the NFA website?
 19 MR. FALVEY: Objection as to the
 20 characterization as to whether her advice
 21 lined up with the NFA website, but go ahead.
 22 THE WITNESS: I forgot the question now.
 23 MR. PLATT: Sure, I'll ask it again.
 24 And, Mr. Falvey, your objection can stand.

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1 I understand where you're coming from.
 2 MR. FALVEY: Sure.
 3 BY MR. PLATT:
 4 Q I think -- let me break it down so
 5 it's a better question. You testified I think
 6 that Ms. Wing told you that the key factor was that
 7 Long Leaf Trading did not exercise discretion over
 8 customer accounts, right?
 9 A Correct.
 10 Q Did she say any other factors that
 11 were important to her legal opinion that Long Leaf
 12 Trading did not need to register as a commodity
 13 trading advisor?
 14 A No.
 15 Q Did it give you cause for concern
 16 as a business owner and educated professional
 17 to know that her legal advice did not consider
 18 the factors that were listed on the NFA website,
 19 all of the factors?
 20 MR. FALVEY: Same objection. Sorry,
 21 same objection as before.
 22 A No, I did not.
 23 BY MR. PLATT:
 24 Q So earlier today you testified that

<p style="text-align: right;">Page 177</p> <p>1 you knew what an associated person was in the 2 context of the futures industry. Can you just, 3 please -- I apologize if you already answered this. 4 Who is required functionally to register as an 5 associated person? 6 A Anybody who solicits clients or manages 7 the solicitation of clients. 8 Q What if you solicit orders, would that 9 qualify too? 10 A I believe so. 11 Q In connection with your due diligence in 12 acquiring Long Leaf Trading Group, did -- actually, 13 strike that. When you became the principal of Long 14 Leaf Trading Group, did Long Leaf undertake any 15 analysis to determine whether or not all its brokers 16 were properly registered as associated persons? 17 A Yes, we reviewed NFA BASIC. 18 Q Do you remember what the results of that 19 review were? 20 A I remember that every one of our 21 brokers was registered and Andrew Nelson had 22 a temporary license. 23 MR. PLATT: I'm going to mark CFTC 24 Exhibit 504.</p>	<p style="text-align: right;">Page 179</p> <p>1 about a couple months in. It was in February or 2 January. I can't remember. 3 (Whereupon CFTC Exhibit No. 505 4 was marked for identification.) 5 Q So I'm just going to show you CFTC 6 Exhibit 505, which is not inconsistent with your 7 testimony. This is a January 25, 2018 email from 8 you to Mr. Evans, the former principal of Long 9 Leaf. You write, "Got a letter today on Andrew. 10 They are initiating a registration disqualification 11 proceeding where he request a hearing unless he 12 withdraws the application. Is this standard 13 procedure? Not familiar with this." 14 Do you recognize this as an email 15 that you wrote to Evans? 16 A Yes. 17 Q Does this refresh your recollection that 18 you probably learned about the disqualification 19 proceeding against Mr. Nelson in late January 2018? 20 A Yes. 21 Q After you received this information 22 that you described as something you weren't familiar 23 with, did you permit Mr. Nelson to continue acting 24 as an associated person?</p>
<p style="text-align: right;">Page 178</p> <p>1 (Whereupon CFTC Exhibit No. 504 2 was marked for identification.) 3 Q I'll represent to you, Mr. Donelson, 4 that this is a printout of Andrew Nelson's NFA 5 BASIC registration information. Do you recognize 6 this, the format of this information? 7 A Yes. 8 Q And I'll scroll through it. 9 A Yes, I do recognize the format. 10 Q I've just scrolled through the whole 11 document. It's a two-page PDF. And under Long Leaf 12 Trading Group, there are two dates for September 5, 13 2017 listed. One is associated person pending. The 14 other is NFA associate member pending. Is that -- 15 do you think that's the information that you saw 16 when you looked up Andrew Nelson's registration 17 status? 18 A Yes, that's what I believe it is. 19 Q Did there come a time when you learned 20 that the NFA was going to initiate a registration 21 disqualification proceeding against Mr. Nelson? 22 A Yes, I did. 23 Q When was that? 24 A Sometime in February of 2018 I think,</p>	<p style="text-align: right;">Page 180</p> <p>1 A I did. 2 Q Did you ever ask anyone -- or you 3 asked Mr. Evans is this standard procedure. Do you 4 remember if Mr. Evans responded to you? 5 A He did. I don't remember, but he didn't 6 really understand the procedure either -- proceeding 7 either. 8 Q Did you ask Ms. Wing about -- in late 9 January 2018 about whether or not -- 10 A Yeah, I did, I did. 11 Q So let me just finish the question, 12 and we've been talking over each other -- 13 A Okay. 14 Q -- a little bit today. It's mostly my 15 fault and I apologize. Did you ask Ms. Wing around 16 the time you received Exhibit 505 whether or not you 17 should continue to permit Mr. Nelson to interact 18 with customers and solicit prospective customers? 19 A No. I asked her what this was and what 20 I had to do. 21 Q What did she say? 22 A We were talking about the procedure 23 itself, that we would have to file something, 24 and we sent the filing over. I don't know when.</p>

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1 Q So was the conversation more around
 2 what to do with the hearing that you reference in
 3 your email here to Mr. Evans?
 4 A Correct.
 5 Q It wasn't about whether or not Mr. Nelson
 6 should continue to operate in a customer-facing role
 7 while the hearing was pending, is that accurate?
 8 A That's accurate.
 9 Q And Ms. Wing never told you around this
 10 time to take Mr. Nelson out of a customer-facing
 11 role?
 12 A No.
 13 Q I have a couple questions about the
 14 Evans era, Mr. Donelson, just because --
 15 A Okay.
 16 Q -- just because some of your
 17 answers today have indicated some knowledge of
 18 the documentation from the Evans era but less than
 19 perfect information about what was going on in the
 20 office under normal practices and procedures.
 21 Is that fair?
 22 A That's fair.
 23 Q During the Evans era was Long
 24 Leaf Trading aware that its trading recommendations

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1 resulted in consistent losses for customers?
 2 A I don't know how they wouldn't know
 3 that, but how many people knew what was going on,
 4 I don't know.
 5 Q It sounds like, you know, your
 6 answer is you're sort of speculating based on
 7 your reconstruction of or analysis of documentation
 8 and not on, you know, everyone was talking about
 9 losses in the office kind of thing?
 10 A Yeah, I don't know whether they were --
 11 how widespread. But if you were a broker working
 12 for Tim Evans, it's hard not to see the losses if
 13 you're getting a report every day.
 14 Q Do you know whether the brokers from the
 15 Evans era received reports every day?
 16 A I believe they were emailed from Gain
 17 every day based on the broker code. That was the
 18 procedure -- that was the process when I acquired
 19 the firm, and I don't think Gain changed their
 20 process.
 21 Q And you say anyone who looked at those
 22 daily customer account statements should know that
 23 customers are losing money over time. What is it
 24 about the customer account statements that would

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1 show that?
 2 A If you're showing a dwindling net liq --
 3 net liquidating value.
 4 Q And all the Long Leaf brokers had the
 5 relevant skills and training to understand those
 6 concepts, is that right?
 7 A I can't speak for the Evans period.
 8 The brokers that worked for me, yes.
 9 Q Do you know which scripts Long
 10 Leaf followed during the Evans era? Earlier you
 11 testified that in 2017 the script matched the script
 12 that existed in the early part of 2018. But beyond
 13 that do you have any understanding of what scripts
 14 Long Leaf used during the Evans era?
 15 A Not really.
 16 Q Do you know whether Long Leaf during the
 17 Evans era told customers that it would use option
 18 selling strategies to drive results?
 19 A I don't know specifically.
 20 Q Do you know during the Evans era
 21 if the brokers told prospective customers that if
 22 you sell four options, there is a strong statistical
 23 likelihood that you're going to win on three of
 24 those, giving you a much more predictable path

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1 to success? Did Long Leaf use that line with
 2 prospects during the Evans era?
 3 A I don't know for sure. I've heard it.
 4 I don't know if they continued to be -- used it
 5 all the time.
 6 Q In what context did you hear that line
 7 during the Evans era?
 8 A They were talking in terms of the CME
 9 study from 1999.
 10 Q And you heard this on recorded calls,
 11 is that right?
 12 A Yeah.
 13 Q Did you ever listen to a recorded call
 14 of Jeremy Ruth?
 15 A I don't remember.
 16 Q During the Evans era did Long Leaf
 17 Trading tell customers and -- tell prospective
 18 customers that as a company we wouldn't have the
 19 ability to work with hundreds of clients month
 20 after month for six years and oversee millions of
 21 dollars if we weren't being profitable for them?
 22 A I don't know.
 23 Q During the Evans era did Long Leaf
 24 disclose to prospective customers complete and

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1 accurate track record information concerning the
 2 trade recommendations?
 3 A I have no records of it.
 4 Q Do you know one way if they did or they
 5 didn't?
 6 A I'm just saying I have no record of them
 7 ever doing it.
 8 Q And you have no independent knowledge
 9 other than the lack of recordation?
 10 A Correct.
 11 Q Did anyone at Long Leaf ever talk about
 12 Jeremy Ruth during the time period you owned the
 13 firm?
 14 A Yes.
 15 Q What did they say about him?
 16 A He was a good salesman. He was hard
 17 to work with. Those were the two main things.
 18 Q Who told you those two things about
 19 Mr. Ruth?
 20 A I'm paraphrasing the conversation
 21 with multiple, but that's -- the ones that had
 22 been there. I think Connor was there. I think
 23 James was there. I think Andrew and Scott may have
 24 been there, but a lot of the brokers had not been

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1 there when Jeremy was there.
 2 Q Based on the statements of brokers
 3 whose time overlapped with Mr. Ruth's time and with
 4 your time, you had an understanding that Mr. Ruth
 5 was a good salesman?
 6 A He was good at sales and he was very,
 7 very difficult to work with.
 8 Q And just so the record's clear, Mr. Ruth
 9 did not work at Long Leaf during the time you worked
 10 there, right?
 11 A Correct.
 12 Q Did Mr. Hatzigiannis or Mr. Campo
 13 or any of the other brokers who overlapped with
 14 Mr. Ruth and with you, did they describe what made
 15 Mr. Ruth good at sales?
 16 A I don't remember any specific comments,
 17 you know, but he was -- as they said, he was good
 18 at talking to the client. He was good at, you know,
 19 getting them over their objections, so on and so
 20 forth.
 21 Q Did any of the Long Leaf brokers whose
 22 time overlapped with Jeremy Ruth ever tell you that
 23 Mr. Ruth made misleading or untrue statements in
 24 the context of soliciting customers to Long Leaf

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1 Trading?
 2 A I don't know.
 3 Q Why was Mr. Ruth fired at Long Leaf?
 4 A I do not know. It was before I got there.
 5 MR. PLATT: Okay. Can we take, you
 6 know, a ten-minute break? I'm close to done.
 7 I just want to make sure that I've covered all
 8 the topics that I want to.
 9 MR. FALVEY: Sure.
 10 THE WITNESS: Sure.
 11 MR. PLATT: Thanks. Let's go off the
 12 record.
 13 (Whereupon a recess was taken from
 14 3:24 p.m., to 3:40 p.m., after which
 15 the following proceedings were had:)
 16 Q Mr. Donelson, earlier when we
 17 were discussing your track record documents,
 18 you referenced a master file.
 19 MR. PLATT: I'm going to mark an exhibit
 20 as CFTC Exhibit 506.
 21 (Whereupon CFTC Exhibit No. 506
 22 was marked for identification.)
 23 Q This is a file titled Trading Performance
 24 Tracking Data Long Leaf 2019. This was produced to

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1 CFTC in discovery. It's a multi-tab spreadsheet.
 2 The first half of it is titled CoreData. Is this
 3 the master tracking file you were referencing?
 4 A Yes.
 5 Q And there's an Account tab --
 6 A Yeah.
 7 Q -- that I just clicked on.
 8 A Yes.
 9 Q Is this the tab that you would filter to
 10 create your reports concerning strategy-by-strategy
 11 analysis?
 12 A I think it would be either the Historical
 13 or the Report tab.
 14 Q I just clicked on the Report tab.
 15 This looks like the tab that you would use to
 16 generate --
 17 A Yeah.
 18 Q -- individual reports?
 19 A That would be individual reports, and
 20 then I think the Historical or the Summary would be,
 21 you know.
 22 Q This is the Historical tab, but it
 23 doesn't look to me like it's filtered. So is
 24 there a tab that contains all the data that would

<p style="text-align: right;">Page 189</p> <p>1 be filtered?</p> <p>2 A Look at the Summary tab. No, it's</p> <p>3 all the data that was created. I just don't see</p> <p>4 the tab --</p> <p>5 Q The Detail file looks like it is filtered,</p> <p>6 the Detail tab.</p> <p>7 A Yeah.</p> <p>8 Q Is there a flag or a piece of data in</p> <p>9 here that you would associate with the strategy?</p> <p>10 A I don't see where it has the strategy</p> <p>11 in there.</p> <p>12 Q So can you walk me through how you</p> <p>13 would create a report associated with a particular</p> <p>14 strategy?</p> <p>15 A There should be a strategy next to</p> <p>16 each one of the trades. That's why I'm confused.</p> <p>17 It had multiple versions of this. So, I mean, like</p> <p>18 it would not -- I'd never go back to a previous</p> <p>19 version but I would go forward to a different</p> <p>20 version, but all the data would stay the same.</p> <p>21 Q This is the one that was produced</p> <p>22 in discovery. So it sounds like either this file</p> <p>23 or a file like it you were able to manipulate --</p> <p>24 A Yeah.</p>	<p style="text-align: right;">Page 191</p> <p>1 how many would be sent out to -- or how -- if it</p> <p>2 would be sent out to X number of people. I don't</p> <p>3 remember the other two or three.</p> <p>4 Q And this is potentially a minor detail,</p> <p>5 but I want the record to be clear. Earlier you</p> <p>6 said that your independent research reflected that</p> <p>7 the broker had to have control or discretion. Was</p> <p>8 there a difference to your mind between the concept</p> <p>9 of control and the concept of discretion?</p> <p>10 A No.</p> <p>11 Q And what did those terms mean to you</p> <p>12 before you received legal advice?</p> <p>13 A I didn't even look at the NFA website</p> <p>14 before I received legal advice. This was before</p> <p>15 the acquisition.</p> <p>16 Q When do you think you looked at the NFA</p> <p>17 website?</p> <p>18 A I'd say February 2018. I think I</p> <p>19 was looking at some other registration issues</p> <p>20 or something but kind of driving around the NFA</p> <p>21 website.</p> <p>22 MR. PLATT: I think that's all the</p> <p>23 questions that I had. Mr. Falvey, did you</p> <p>24 have any clarifications you wanted to ask</p>
<p style="text-align: right;">Page 190</p> <p>1 Q -- or filter to produce strategy-</p> <p>2 by-strategy or customer-by-customer reports --</p> <p>3 A Yes.</p> <p>4 Q -- in 2019, is that generally correct?</p> <p>5 A That's generally correct, yes.</p> <p>6 Q I just want to turn back very briefly</p> <p>7 to your discussions with Ms. Wing concerning Long</p> <p>8 Leaf Trading's registration as an introducing broker</p> <p>9 or commodity trading advisor. You said that you</p> <p>10 clicked around the NFA website and identified a</p> <p>11 list of factors that were relevant to the analysis,</p> <p>12 and I just want to understand what it was that you</p> <p>13 learned independently of your legal advice about</p> <p>14 what factors were relevant to this analysis.</p> <p>15 A Like I said, there were five factors</p> <p>16 and the first one being that you had to have control</p> <p>17 or discretion over the account, which we didn't</p> <p>18 have. And the rest of them were about -- I kind</p> <p>19 of stopped looking there after it says you have to</p> <p>20 have discretion, which is the advice that she gave</p> <p>21 me, "she," the lawyer.</p> <p>22 Q And you don't remember what those other</p> <p>23 factors were?</p> <p>24 A I have a general -- one had to do with</p>	<p style="text-align: right;">Page 192</p> <p>1 the witness?</p> <p>2 MR. FALVEY: I do not. I'd like</p> <p>3 to thank you for your professionalism and</p> <p>4 civility, Mr. Platt. I do appreciate it.</p> <p>5 So thank you for that.</p> <p>6 MR. PLATT: It's my pleasure. I thank</p> <p>7 you, Mr. Donelson, for appearing on behalf</p> <p>8 of Long Leaf for a second day of depositions.</p> <p>9 I know it's a long day. So with that, we can</p> <p>10 go off the record.</p> <p>11 MR. FALVEY: Thank you.</p> <p>12 (WITNESS EXCUSED)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

<p style="text-align: right;">Page 193</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF ILLINOIS 3 EASTERN DIVISION 4 COMMODITY FUTURES TRADING) 5 COMMISSION,) 6) 7 Plaintiff,) 8 vs.) No. 20 C 3758 9) 10 LONG LEAF TRADING GROUP,) 11 INC., et al.,) 12) 13 Defendants.) 14 15 I, JAMES A. DONELSON, do hereby certify 16 that I have read the foregoing transcript of my 17 remote 30(b)(6) deposition given on June 24, 2021, 18 consisting of pages 1 to 195, inclusive, and I do 19 again subscribe and make oath that the same is a 20 true, correct and complete transcript of my 21 deposition so given as aforesaid, and includes 22 changes, if any, so made by me. 23 24 Corrections have been submitted No corrections have been submitted</p> <p style="text-align: center;">JAMES A. DONELSON, Deponent</p> <p>Subscribed and sworn to before me this day of , 20</p> <p>Notary Public</p>	<p style="text-align: right;">Page 195</p> <p>1 Pursuant to Rule 30(e) of the Federal 2 Rules of Civil Procedure for the United States 3 District Courts, if deponent fails to read and sign 4 this deposition transcript within 30 days or make 5 other arrangements for reading and signing thereof, 6 this deposition transcript may be used as fully as 7 though signed, and the instant certificate will then 8 evidence such failure to read and sign this 9 deposition transcript as the reason for signature 10 being waived. 11 The undersigned is not interested in the 12 within case, nor of kin or counsel to any of the 13 parties. 14 Witness my official signature and seal as 15 Notary Public, in and for Cook County, Illinois on 16 this 14th day of July, A.D., 2021. 17 18 19 Mary Maslowski, CSR, RPR 20 Notary Public 21 79 West Monroe, Suite 1001 22 Chicago, Illinois 60603 23 24</p>
<p style="text-align: right;">Page 194</p> <p>1 NORTHERN DISTRICT OF ILLINOIS) 2 EASTERN DIVISION) 3 STATE OF ILLINOIS) 4) SS. 5) 6 COUNTY OF COOK) 7) 8 9 I, Mary Maslowski, Certified Shorthand 10 Reporter and Notary Public in and for the County of 11 Cook, State of Illinois, do hereby certify that on 12 June 24, 2021, at 9:07 a.m., the remote deposition 13 of the witness, JAMES A. DONELSON, called by the 14 Plaintiff, was taken before me, reported 15 stenographically and was thereafter transcribed 16 by me. 17 The said witness, JAMES A. DONELSON, was 18 first duly sworn to tell the truth, the whole truth, 19 and nothing but the truth, and was then examined 20 upon oral interrogatories. 21 I further certify that the foregoing 22 is a true, accurate and complete record of the 23 questions asked of and answers made by the said 24 witness, at the time and place hereinabove referred to. The signature of the witness was not waived by agreement. The deposition terminated at 3:50 p.m.</p>	